

**THE MINUTES OF THE REGULAR CITY COUNCIL MEETING HELD  
TUESDAY, JANUARY 18, 2000 AT 6:30 P.M.**

The Meeting was called to order at 6:30 p.m. Present: Council Chairperson Seng; Council Members: Camp [tardy], Cook, Fortenberry, Johnson, McRoy, Shoecraft; Paul A. Malzer, Jr., City Clerk;  
The Council stood for a moment of silent meditation.

**READING OF THE MINUTES**

COOK            Having been appointed to read the minutes of the City Council proceedings of Jan. 10, 2000, reported having done so, found same correct.

                Seconded by Fortenberry & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

**PUBLIC HEARING**

AMENDING SEC. 8.20.050 OF THE LMC TO REFLECT CHANGES MADE TO THE NEBRASKA PURE FOOD ACT;

AMENDING SEC. 6.08.160 OF THE LMC TO INCREASE THE MINIMUM FINE FOR BARKING DOGS TO \$50.00 - Leon Vinci, Health Director: With me today is Joyce Jensen who is in charge of our food section with our department. And as you're aware in the Health Codes, food sanitation is a very important component. Part of those regulations range in the full area of food safety & we stay in lock step with the State Government. The change before you tonight is a simple amendment bringing our code up to date & in compliance with the State level. Their last revision was around Sept. of '97 & there was a recent one that just occurred in Aug. of '99 & we're just amending our code to that effect. Joyce.

Joyce Jensen, Health Dept.: The changes that were adopted at the State level were not opposed by the industry & the industry was in support of those. It was more of a clean up bill to the major change that was made in 1997. And at our Food Advisory Committee, it was approved in Nov. of '99 & there was no opposition at all. It was in full support of industry.

Mr. Vinci: We also have under 00-5, some follow up action that the Council reviewed concerning the results of the final report of the special task force on the barking dog issue. And that was a long process that involved a wide range of community participants. And in the report, it was felt that if we, through the Council action, tightened up some of the fines that might assist in better enforcement & improved conditions.

Jim Weverka, Health Dept., Animal Control Div.: The fines are going to be increasing from \$25 to \$50 for the first offense & the second offense will go from \$50 to \$75, does not include court costs which would be added on top of that. So, it would be an added incentive for an individual to do something about a barking dog, hopefully.

Jeff Fortenberry, Council Member: Thank you for your work on these. The fines still seem low to me. How were those determined? Even though they're going up significantly.

Mr. Vinci: We did two things, Councilman. We looked at other fines

that are in the public health regulations that we have at the local level & felt that we didn't want to jump too far too fast. And that's why the numbers came out where they did. By all means, your Council has the right to set whatever level you feel is appropriate & we would support that if that's what you decide.

Cindy Johnson, Council Member: Jeff, a lot of it is because what's realistic what the judges will work with & that's what our attorney's had advised.

Coleen Seng, Council Member: Its those pesky squirrels, right, that cause those dogs to bark at times, right?

Mr. Vinci: They contribute to the problem, yes.

This matter was taken under advisement.

CHANGE OF ZONE 3217 - APP. OF RIDGEWOOD NEIGHBORHOOD ASSOC. FOR A CHANGE FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL ON PROPERTY GENERALLY LOCATED 1/4 MILE SOUTH & EAST OF THE CORNER OF S.W. 27TH ST. & W. DENTON RD. - Chad Delowey, no address given, representing applicant: I'm just here to answer any questions you may have about the rezoning. The major issue why we requested this is to bring it up to date with the Comp. Plan, define what the land is used for. It more represents Ag. Residential than it does Agricultural. So, if you have any questions, I'm here to answer your questions.

This matter was taken under advisement.

CHANGE OF ZONE 3218 - APP. OF THE PLANNING DIRECTOR TO AMEND THE ZONING ORDINANCE OF THE LMC TO ADD CHAPTER 27.68 RELATING TO PROVISIONS FOR "PERSONAL WIRELESS FACILITIES" TO PROVIDE A PURPOSE, DEFINITIONS, TO PROVIDE FOR PERMITS, PERMITS TERMS, RENEWAL APPLICATIONS, RENEWAL DETERMINATIONS, CONDITIONS FOR RENEWAL, LOCATION PREFERENCES, APPLICATION REQUIREMENTS, STANDARDS FOR EVALUATION, DESIGN CRITERIA, GENERAL REQUIREMENTS, ABANDONMENT OF FACILITIES, & TO ALLOW PERSONAL WIRELESS SERVICES FACILITIES IN ANY ZONING DISTRICT. (IN CONNECTION W/00-4);

CHANGE OF ZONE 3219 - APP. OF THE PLANNING DIRECTOR TO AMEND SECS. 27.03.110 & 27.63.150 OF THE LMC RELATING TO THE DEFINITION OF "BROADCAST TOWER" & THE GUIDELINES FOR REVIEW OF A SPECIAL PERMIT FOR A "BROADCAST TOWER" (IN CONNECTION W/00-3) - Jennifer Dam, Planning Dept.: The City Attorney's Office, the Planning Dept. have been working in conjunction with River Oaks Communications Consultant on a wireless ordinance since April of this year when it became clear to us that the number of wireless facilities that would be coming in was going to be increasing dramatically in the next several months. We had a first draft of the ordinance that we presented to the telecommunications companies in July. We had a public information meeting on July 20th & received comments on that ordinance, made substantial changes over the next several months. A similar copy to what is before you today was provided to 34 neighborhood representatives & 32 representatives of the telecommunications industry in Nov.. We requested that comments be received by Nov. 29th so they could be included in our staff report for the Planning Commission. At that point, Alltel & LES were the only two entities that had commented. We did address their comments. We met with Alltel shortly before the Planning Commission meeting & they supported us. At the Planning Commission meeting a

representative from AT&T indicated that they had some concerns but they didn't feel that they were substantial & they hoped to work those out with us between the Planning Commission & the City Council Meetings. Steve Huggenberger & I met with the representatives of AT&T & later Sprint on several occasions & did make changes to the proposed ordinance which is before you today. We do have one little motion to amend of our own. It was pointed out to us that we make a reference to towers under a hundred feet & towers over a hundred feet but not towers at a hundred feet. So, our motion to amend changes the language so that it has a site plan for towers of a hundred feet or less or over a hundred feet in reference to co-location. We do believe that there are some industry representatives that have some concerns that will be before you today. And we anticipate that there will be some motions to amend with regard to automatic renewal of the term of the special permit. This ordinance establishes a 15 yr. period term for the special permit after which renewal would be required. Staff still recommends that a public hearing be required for the renewal because changes in the 15 yr. period may take place at (inaudible) renewal. The other issue that we believe there will be a motion to amend on has to do with providing land at the base of the facility for co-location. Again, we believe that that language can be handled in a separate agreement & that the ordinance does not need to be amended in order to take care of that issue. So, I'll be available for any questions now or later.

Jonathan Cook, Council Member: I'll just ask the question now, on Item 4, just to see if there're any mistakes need to be corrected there, Change of Zone 3219. We decided not to declare this an emergency but our version of the legislations says declaring an emergency. Just want to make sure...okay. The other thing is on page 2, line 5, is that suppose to be "personal wireless facilities" as opposed to "personal wire facilities". I don't know if that matters to anybody but...

Ms. Dam: Yes, it should be "personal wireless facilities". Thank you.

Ms. Seng: Paul, do you have that? On page 2, line 5, where it says "wire", it should say "wireless".

Clerk: Okay.

Ms. Seng: Dana, you got that?

Mr. Cook: And I just have a general question on the item 4, it says commercial radio towers not exceed 50' in height & amateur radio antenna installations shall not be considered broadcast towers. Is there some limit on amateur radio installation tower heights?

Ms. Dam: Yeah, amateur radio antenna are handled separately under Federal law & several years ago there was a separate section added to the zoning ordinance under Special Permits specifically for amateur radio antenna.

Loel Brooks, Brooks Pansing Brooks Law Firm, NBC Center, Suite 984, representing AT&T Wireless: It is our great opportunity to have a chance to talk with you this evening a little bit about the proposed wireless ordinance that's before you. We would like to take a few moments & I would like to beg the permission of the Council to extend to me the courtesy of 15 mins. to talk about the character of the ordinance, some of the issues that we think are of importance & a couple of proposed amendments that we would like to see entertained this evening if that

would be at the pleasure of the Council?

Ms. Seng: We think 15's a little lengthy.

Mr. Brooks: I'll try to keep it short. Thank you.

Ms. Seng: Talk fast.

Mr. Brooks: You bet. Just to extend on Ms. Dam's comments, several of the industry representatives from the telecommunications industry have had an opportunity to work closely with Ms. Dam & the City Attorney's Office through Mr. Huggenberger over the last several weeks to further identify issues & concerns that the industry & most particularly, AT&T Wireless, have had concerning the proposed telecommunications ordinance. I will say that we are very gratified & extremely pleased with the progress that we've made. On Jan. 10th, a substitute ordinance was provided to you which contained many, many changes which I think reflect a tremendous advancement in the quality of this ordinance both for the City & for the industry. I think we were able to provide some uniformity in language, uniformity in definition. We were able to clarify a number of procedural & legal issues within the ordinance & I think that's been very gratifying to have a chance to work with the City in improving what we think is an ordinance that will move into the future. There are, however, several areas of concern that remain. Some of those are legal, some are procedural, some are semantical. And those issues do carry some weight. We are hoping that we will have an opportunity in the future to discuss many of these issues again at some later date as we move forward. And I would say that we would like to reserve & do feel that we must reserve the opportunity to address certain elements of the ordinance with regard to their legal implications both as they may relate to State law, to Federal telecommunications law, & potentially to local law. But we feel that it's in the best interest of all parties given the mission of the City to deal with this issue at this time, to move forward in the most productive & cooperative way that we can. I do think that it is our objective as an industry to do as much as we can to work within the provisions of this ordinance given the understanding that it's the desire of the city to promote co-location. That is the industry's desire. It's the city's desire to alleviate & minimize visual effects from towers & personal wireless facilities within the City. That, too, is the industry's objective & we hope to work aggressively & cooperatively with the City in working within the provisions of this ordinance. It has been suggested that by virtue of the changes that have been made in recent weeks, which led up to the substitute ordinance, which was given to you on Jan. 10th, that it might be useful to take a brief moment using the KISS formula, Keep It Simple Stupid, which is what we use in our law office all the time. We want to make sure that we are not overdoing this but there's certain elements of this ordinance that I think would be useful to you to understand why we are coming to you for a couple of amendments. And I do have an overhead which I hope I can get to work here. And perhaps what I'll do is supplement that by this chart if this would be easier. The ordinance, while it has been changed & modified, continues to preserve the three level analysis that was initiated at the ordinance at the beginning with regard to locations of personal wireless facilities. There are some unique characteristics to this particular ordinance which I think are important for you to understand. First of all, the ordinance provides that personal wireless service facilities can be located in any zoning

district. Now, there may be criteria established under which each of those zoning districts may vary the character of what can be placed in those districts with regard to height & other kinds of things but any zoning district can contain a personal wireless facility. What is unique about this bill or about this ordinance is the fact that the location sites that are identified, "preferred location site", "limited preference site", & "sensitive location sites", do not really describe an area of geography. They do not describe a particular zoning district. They don't describe a particular neighborhood. They don't even describe the characteristics of a building. What they do describe are the characteristics of the antenna or facilities, wireless facilities, that will be located somewhere within the City. That's somewhat of a confusing twist on traditional zoning ordinances. This is not, in our opinion, a traditional zoning ordinance. It doesn't follow the typical permitted use criteria. This is a separate kind of arrangement. In fact, I think it's more of a visual effect or visual issue than it is a land use issue. And therein lies some of the confusion, I think, surrounding how this ordinance works both from the City's standpoint & certainly from the industry's standpoint. And if I may take just a moment, the preferred location site is pretty much what it says. It says we want wireless facilities located in a certain way. As you'll note the preferred location site has two basic criteria. In sites wherever they may be located in the City, personal wireless facilities must be one of two things either unobtrusive or minimally obtrusive. Now, we don't know what those terms mean because they're not defined in the ordinance which is one of the concerns we have going forward. The City doesn't know what they mean. We don't know what they mean & so we're going to have to work together to figure out what they do mean & that's going to take time & it's going to take some work on both parties part to determine what these terms mean. The obtrusive/unobtrusive sites, which I presume mean that you can't see them very well or perhaps not at all, we're not sure, can be located on publicly owned or privately owned land anywhere in the City. The other criteria that are identified in the ordinance that relate to unobtrusive facilities are those that relate to visibility, aesthetic issues, traffic flow, public safety, health & welfare. There are examples in the ordinance, itself, existing buildings, co-locating on existing towers, screened rooftop mounts, billboards, electric substations, other camouflaged sites, the word "camouflaged" is defined but it's not a criteria for the establishment of a site. And this does exclude new towers. But other kinds of facilities, as long as they are unobtrusive, can be located either on publicly or privately owned property without regard to what the property actually looks like or where it's located. If the facility is not unobtrusive then it must be minimally obtrusive in order to be located in a preferred location site. Again, we don't know what minimally obtrusive mean. We will soon find out I'm sure as we implement the ordinance. Again, this may be located on a publicly owned site. It may be located on a privately owned site in a commercially or industrially zoned area. And criteria, in addition to these areas include minimal impact on the surrounding area. We don't know what that means. An appropriate distance, whatever that means, from residential land uses. And concerns with regard to the scale of the facility & the surrounding area & the impact on the particular location. So, the primary criteria

that drives the entire ordinance is whether a facility is or is not unobtrusive or minimally obtrusive but, again, we do not have a definition as to what that really means. If the facility is neither unobtrusive nor minimally obtrusive, then it falls within one of the other two site locations which would be either a limited preference site which can be either on publicly owned property or privately owned property in commercially or industrial areas or a sensitive location site which is largely in an area of residential use, primarily residential use, or a laundry list of other areas which are of sensitive dimension & concern including the Capitol View Corridors, Capitol Environs Dist., entryway corridors, landmarks, landmark districts, etc. Some of the other criteria in the ordinance suggest that there must be a showing of good faith, that measures have taken to secure a preferred location site or a limited preference site before you go into a sensitive area. In other words, if you're trying to go into the Capitol Environs Dist., the City's going to want to know whether you have identified locations elsewhere where the facility could become unobtrusive or minimally obtrusive. If we find something in the Capitol Environs area that is unobtrusive, then it could become a preferred location site. I probably confused everyone with this analysis & I'm sorry. That is part of the problem that we're dealing with. Trying to understand how we work within this framework, how we accomplish the City's objectives of aesthetic, purity, if we can say that, while still trying to foster the other objective of this ordinance which is to promote the implementation of a telecommunications infrastructure in a wireless context which is going to be an extremely important tool of economic development in this City & for all City's around the Country. We have worked out some compromises with regard to procedure, with regard to some definitions, with regard to mechanics within the ordinance. We do not, however, have definitions on some of the key & driving principles & it seems to me that we're going to have to work together in the future to try to provide some standard of some kind that will allow both the City & the industry to move forward these criteria. But we're hoping that we can do so at some later time. We hope that we can work collectively & collaboratively to at least define those issues. The issues that are of concern to us this evening & for which we would like to present to you motions to amend are two-fold as Ms. Dam indicated. One relates to the renewal policy with regard to permits that are granted for wireless facilities. And the other one relates to the amount of space that must be "reserved" by a provider of a tower for additional co-location facilities. The representative from Sprint, who is also here this evening, will address the second of the issues & I'd like to address briefly the first of the issues. If I may, I have a proposed amendment that I would like to circulate to you for your consideration & I'll describe basically what we want to do with this proposed amendment as it's circulated. One of the issues that has created concern & which continues to create concern, both procedurally, economically, & legally, is a provision of this ordinance that provides that permits issued for wireless facilities have a term of 15 yrs. & then they must file for...the applicants must file for a renewal of the application. The current ordinance provides that the City Council can deny if they find, after 15 yrs., that these facilities no longer meet one of the criteria on the board that we just discussed, denies a permit for the use of that

facility. That's an issue separate & distinct from this amendment but triggers the reason for this amendment. Our concern is that the purpose behind the need to have a 15 yr. permit is to allow the City to have an opportunity to review each & every wireless facility location site at the end of that 15 yr. term. for purposes of determining, presumably, the aesthetic quality of those facilities. Our concern is that in many cases, under the current ordinance, any new facility from day one, whether it's a tower or a rooftop mount or any other kind of facility that is placed in this City must be adopted through a special permit. That includes any new facility whether it's in a preferred location site, a limited preference site, or a sensitive location site. The purpose of the preferred location site, again, is to try to promote visual purity, to try to keep down the proliferation of visible towers. So, the ordinance is going to direct & the industry is agreeing that it should direct, in some ways, most of our new locations to preferred location sites making those facilities unobtrusive or minimally obtrusive under the current standards as they exist. Our view is that if we comply with that requirement today, if we make a facility unobtrusive, or minimally obtrusive, wherever it may be, that at the end of the 15 yrs., we should not have to again start from scratch & prove again that these facilities again meet some unknown criteria of minimal obtrusiveness or unobtrusiveness. That if we have, in fact, gone through the process of obtaining a permit in a preferred location site, that there ought to be an expedited or administrative permit renewal application process which would allow the telecommunications providers to show you that the facility has not been abandoned & that the facility is in compliance with the other elements of the City Code at the time. If those two criteria can be established, given the fact that we've already proven to the City that the facility is either unobtrusive or minimally obtrusive, that we should be able to have an expedited administrative permit process. Renewals of applications in other areas, for example limited preference sites or sensitive location sites, would, again, as the ordinance currently provides require a renewal application for the Council to review all applications again. The trend in the industry is going to be to try to co-locate in unobtrusive sites. Which means that most of the new facilities in this City & around the county, if feasible, economically & technically, will be as unobtrusive as possible. Whether we meet the City standard, we're yet to know. But the goal is to be either unobtrusive or minimally obtrusive. So if we establish that standard once, to the satisfaction of the Council, it is our view that to administratively review the permit would be the appropriate mechanism for the City to review the permit based upon the fact that it's still in current use & that we are otherwise in compliance with City Codes.

Annette McRoy, Council Member: Going back to before you brought up your proposed amendment, you were discussing unobtrusive & minimally obtrusive locations but then in your amendment, you talk about if you have a proposed preferred site that you'd like administrative review so wouldn't that in turn, if you're already located at a preferred location, then it's obviously unobtrusive or minimally obtrusive because on page 9 of the ordinance, on line 5, it defines & lists locations that are unobtrusive or minimally impact obtrusively. So I guess I don't understand how you can understand preferred location & that be okay & have

an amendment to the ordinance which say you don't understand the definition & that needs to be clearer because from my reading, as a lay person, I understood what they were spelling out were these locations, why they'd be preferred locations. So, I guess from the industry...I'm asking you from the industry standpoint, how can you understand one definition & not the other?

Mr. Brooks: Well, I think we're trying to apply a consistent standard. The point that we're trying to make is, & you're quite right, if you're in a preferred location site & you receive a special permit for that purpose, it must mean that you are either unobtrusive or minimally obtrusive. Based upon that, our view is that we should be able to have an administrative process that allows us to have our renewal process done more quickly, more expeditiously & on standards that are not based upon the entire application process since we've already had to show that we're unobtrusive or minimally obtrusive. That's all we're saying. And I think you're point is well taken. If we're in a preferred location site, we've proven those two criteria, whatever they may be. But those are the criteria that we have to comply with in order to satisfy the City's inquiry concerning the location of facilities. And if we attempt to do so, as we are, then we're hoping that there is a burden of proof that we have undertaken that would allow us to move forward on an expedited basis.

Jonathan Cook, Council Member: Why couldn't you just resubmit the original application, essentially as it is, regarding any research that you've done on whether this is a preferred location, that it's unobtrusive. Why would this be a particular burden?

Mr. Brooks: Well, I think it's a burden because we have to again submit information to the City that complies with all of the application criteria. That application criteria has to be reviewed by the Planning Commission, has to go through a public hearing process in order for that to occur because many of these, most of these facilities will have been located pursuant to a special permit. That's...it's costly, it's time consuming, it's uncertain with regard to what the Council at that time may do. Our notion is that we have established compliance with a standard, that this Council has requested that we comply with & that by virtue of that, we have performed to the highest level to which the Council has established criteria for us to follow & that should allow us to move through more quickly, more administratively & that if there are concerns in other locations that that process then would be more reasonable under the circumstances. I will say that there are legal issues with regard to the termination of a permit. I think that the putting a term on a permit raises some very significant issues with regard to land use & with regard to compliance with the Telecommunications Act of 1996. However, those issues, I think we have to work through cooperatively as time passes so that we have a better understanding of the implications of those. But from an administrative process, with the number of ordinances that companies have in City's around the county, for example, AT&T Wireless or Sprint, the process of going through the entire public hearing & all of the application criteria again seems to be a needless economic & administrative burden that we would like to rectify through an administrative process.

Jon Camp, Council Member: I guess that brings a question to mind in talking about the administrative convenience & thinking down the road of



ways that the government or the City administration can operate efficiently. Let's take a hypothetical for a second, Loel, say we get to that 15 yr. period & you need to go through this licensing, what does that do to the industry as far as the potential for losing a site & I guess what I'm thinking about is if there's a potential of losing a site & then say it was denied, then you'd have to go through reapplication to find a new site, are we looking at...what type of time period here are we now creating? Something that could be very difficult for the industry & suddenly a lapse in service or what have you.

Mr. Brooks: Well, trying to relocate a site is both immensely expensive & time consuming & does not have certainty. Fifteen years out we don't know where sites may be available. We don't know how much that's going to cost. Certainly, we're finding now as we begin to proliferate the construction of antennas & wireless facilities through the City, that landowners are becoming very keen on the notion of compensation. This is becoming a very expensive process. Locating these sites is expensive & time consuming & to have to relocate when we've already proven the City's standard, could mean that we do not have service in an area if we are unable to locate an alternate facility. So, there are economic consequences to that given the legality of that particular decision. But it could force a provider of services to have to completely reengineer their site selection process, reengineer their coverage in the area, try to negotiate with providers who may see a competitive reason to make that much, much more expensive. So, it has a long term detrimental economic effect on the providers & I think, by virtue of that, it has a long term economic detrimental effect to the City & it's consumers of telecommunication services.

Mr. Camp: Under your proposed language here, just to make sure we're clear then, would this be...why don't you describe then what happens in 15 yrs. in the preferred location? Is it an automatic...

Mr. Brooks: Within not more than 365 or less than 90 days, before the permit is to expire, the provider would submit to the Planning Director a renewal application which would say (inaudible) three things: this facility is located in a preferred location site pursuant to Permit #X; the facility is currently being used, it has not been abandoned; & that the provider is in compliance with all other City codes. That would be submitted to the Planning Director who would have 45 days to make a determination as to whether to grant or deny the renewal permit. And once the Planning Director made that decision, then it would be permitted or not or basically the renewal application would be granted. But the criteria would be only that is has not been abandoned, the facilities not been abandoned, that we're in current compliance & that the original permit require that it be in a preferred location site. Meaning that it was either unobtrusive or minimally obtrusive. Those three criteria.

Mr. Camp: Is there any way that that preferred site could become unpreferred during that 15 yr. period?

Mr. Brooks: Well, I think that issue suggests that somehow the land use around the facility might have changed so that it is no longer under current definitions minimally obtrusive. The question with regard to land use law is how does that apply in a land use context because this is, after all, a land use. There are laws replete throughout the country with regard to the authority to withdraw or force a private person to remove

land by virtue of the encroachment or change of surrounding territories & that's an enormous legal issue. For example, if we used metal pipe in houses in 1920 & had a permit that stopped & at the current time it said you can't have metal pipes in your house, would it be at the authority of the Council to be able to tell a homeowner that they'd have to remove their metal pipes because we only use plastic today? Those kinds of concepts regarding unconforming uses & regarding taking of private property are issues that I alluded to earlier that need to be further evaluated. They're significant issues. Certainly the City's interested in the visual issues with regard to this ordinance but their land use issues of very significant, of very great significance that also have to be evaluated so I would say that that's an issue that we're going to have to talk further about in terms of what happens in land use changes. Our notion is we've made the compliance requirements through these criteria as they've been established by the City & that so long as they continue to be used & we continue to operate in accordance with the code, that an amendment should be granted. If we don't comply with the code, or we have otherwise abandoned the facility & that's a defined term in the ordinance, then the application could be denied.

Ms. Seng: Loel, to get down to it, you would really prefer having an administrative review instead of going through the public process?

Mr. Brooks: We're not opposed to a public process. I think what we're saying is with regard to these particular locations we have already demonstrated compliance with the highest level of criteria that the City's established. By doing so, it's our hope that we have eliminated most of the concerns with regard to what the City is trying to implement now & that there ought to be an expedited way to simply continue the use of those facilities in the future. Other facilities located outside these areas would have a different criteria.

Ms. Seng: Jeff has a question.

Jeff Fortenberry, Council Member: Actually, if you don't mind staying there, I 'd like the staff to come forward. I assume you've discussed this issue with them & I'd like to be...your arguments are compelling but I'd like to hear the [break in tape] criteria preferred location are met.

Steve Huggenberger, City Attorney's Office: Why we didn't accept the automatic renewal provision?

Mr. Fortenberry: Well, it's my understanding that what they're suggesting is automatic renewal or administrative renewal under certain conditions if they're in preferred locations which are defined as public property or commercial private property & then are designated as unobtrusive or minimally obtrusive in the initial permitting process. Is that correct?

Mr. Brooks: Yes.

Mr. Huggenberger: My only thought there on why we would have an objection or one of the objections to an automatic renewal in that case would be if it lost it's status as minimally obtrusive or unobtrusive. Maybe the reason it was unobtrusive was because a building or something was hiding it & that building got removed during the 15 yrs. I mean we're searching for examples here. The change from public property to private property I don't believe really makes a great deal of difference here because this applies to both public & private property. So, if the City

or the State or whatever sold the property, I don't think that would have a significant change.

Mr. Fortenberry: So, I think Mr. Brooks' initial discussion about the two layers of criteria as being somewhat confusing, preferred status & unobtrusive & minimally obtrusive, you're saying now are necessary because they actually form two layers of discernment for issuance of a permit.

Ms. Dam: Correct.

Mr. Fortenberry: So, just because you're in a preferred location, you still have to meet unobtrusive, minimally obtrusive criteria.

Mr. Huggenberger: And in the majority of examples, they will in the 15 yrs. would be my guess.

Mr. Fortenberry: Is it an excessive burden in your opinion though to allow even if a land use did shift, is it unreasonable to expect other land uses that were there at the time to also have to conform with the new land use that was not their doing? Did I confuse you?

Ms. Dam: I think so. Let me try to answer. This would be a special permitted use not a use that would be allowed by right. So, we're allowing it under certain circumstances. We're saying that we would like to have the opportunity to rereview that in the future because those circumstances may change. If this were something that were allowed by right, then we wouldn't have the opportunity to have that renewal if the circumstances changed in the future. What we're saying is that by their nature, these facilities are different & are a special permitted use so are handled differently than other land uses are handled throughout the City & throughout the zoning ordinance.

Mr. Fortenberry: But even within this set of criteria, it seems to me they're agreeing that the one's who don't meet the preferred site status would fall under that.

Ms. Dam: I think the question would be if there was a facility that was minimally obtrusive, a new tower that was minimally obtrusive & maybe I'll use an absurd example to get my point across, say a new tower is being located in a district that is industrial & far away from residential areas & for some reason, 15 yrs. from today, it's residentially developed, the zoning has been changed to residential & it's residentially developed. Is that then still an appropriate place for this to be or do we want to reevaluate that & find other ways that it could still be permitted there but be less obtrusive or find other locations that are more suitable.

Mr. Fortenberry: Camouflaging or other...

Ms. Dam: Right, right.

Ms. Johnson: Okay, so then the question is is it right then to change the land use around the tower & then make the people that have the tower adjust to that land use.

Ms. Dam: Again, the tower is a specially permitted use on top of the base zoning. It's not the base zoning itself.

Ms. Johnson: But is it right? I mean that's the question. Is it the right thing to do & who would develop around a tower other than someone that would probably be appropriate around a tower?

Ms. Dam: And I guess that's a question I'll let you answer.

Mr. Cook: Well, we don't know what the courts will say in regard to certain things & I wouldn't want to make any assumptions about that now, about whether or not we can say that the future change in land use around

a tower will affect whether the tower can stay. But it just seems to me that as Councilman Camp mentioned, could this be a non-preferred site? There could be things that happen on the property that the tower is on. I mean the building being removed, trees getting a disease & being cut down. I guess that I wouldn't want to put the burden on Staff to have to go back out, look at the site, evaluate whether things had changed over 15 yrs. as opposed to putting the burden on the company who knows their own sites better to provide that information whether anything's changed. Because it seems to me, if nothing has changed, if it's essentially the same circumstances, the process is not terribly burdensome. You would submit essentially the same application again. You would say little has changed, it's still unobtrusive, & it would probably end up on the Planning Commission's consent agenda. There probably wouldn't be anybody who'd show up. But, it's obviously ...

Mr. Brooks: That would certainly be the desirable outcome but there's no assurance that that would be the outcome. And we've invested, as these companies are planning to do, investing millions of dollars in this community, for the purpose of establishing a telecommunications infrastructure in this city to benefit this City & it's citizens, to deal with them in a fashion that gives no certainty to that investment, no certainty to their ability to continue to provide services by virtue of changes of circumstance over which they would have no control because if they do change this, they have to come back for...if the owners change it, they have to come back for an amendment to their special permit. So, the owners can't do anything. The site owners cannot do anything, make any changes other than maintenance without having to come back for a special permit. So, it would be other parties, as Council member Johnson was suggesting, other parties, other uses that would affect what we do. Our notion is that the equity suggests that without getting into a tremendous legal discussion about whether the power exists to ask us to change to conforming changes around us, the notion is that the economics & the mission of trying to develop this infrastructure demands some level of certainty, some level of expedited way to deal with issues that we feel that we have complied with in demonstrating to the Council that the highest level of standards have been complied with. So, I guess the question is is it right? We don't think it's something that's simple, we don't think it's something that's certain, if we have to go through an entire application process again to prove what we've already proven in the first instance.

Mr. Cook: Well, you brought up a very good point though which is that the owner of the property that you are leasing may own property surrounding your tower site & that that person could do whatever that person wants with the property & you wouldn't have control over that unless it's part of the lease agreement.

Mr. Brooks: That's right.

Mr. Cook: That the landlord would keep these trees or keep that building & if you go through that process to make sure that the landlord doesn't change the property in such a way that it would make your structures much more obtrusive, there's no guarantee. I mean, to me, the whole 15 yr. reassessment addresses the possibility that the landlord could use the property for something completely different. And, yes, it's out of your control but it's not like a surrounding land use from a

different owner. This is the landlord you're leasing from. And, it seems to me, if that landlord makes changes to the property that now make the circumstances such that the tower...we may not approve renewal of the tower, that's something the landlord has to deal with. That's also no income to that person from the lease of the property. So, I just don't want to give up our ability to have that full discussion in 15 yrs. because I don't really know what would happen. I think it's premature to say. And, quite frankly, any Council 15 yrs. from now can decide upon looking at how the renewal process is working that we need to streamline it. But to do it now & try to predict what'll happen in 15 yrs. makes me really uncomfortable.

Mr. Brooks: And I guess on the other side of the coin, that very issue is why we're trying to find some certainty in a process that we don't have any idea how will be handled 15 yrs. from now. It may be the intent of this group to handle things in a perfectly logical way with the defined definition that they use administratively for these issues. We can't predict whether that will or will not occur. It is a policy question which is largely why we're here &, quite rightly, Mr. Huggenberger & Ms. Dam indicated these are policy issues beyond which we cannot make changes. This must be submitted to the Council & they were very correct in that assessment so I guess the notion is where do the equities lie here in this circumstance. I will also say, & I don't want to occupy too much of your time, that this particularly issue with regard to a termination of a permit is, to the best of my knowledge, largely unprecedented. If you were to build a building tomorrow on the basis of a special permit, I'm not aware, & Ms. Dam may be able to correct me, that the City 10 yrs. from now or 15 yrs. from now or at any time will be able to say sorry, you can't use this building, you need to tear it down, we decided that we want houses there. This is an issue of land use that is being intertwined with an issue of visual aesthetics. And trying to conform those two concepts together is a struggle & that's why we've been struggling with this ordinance. It's my hope that working cooperatively with the City, we can find ways to improve this ordinance over time. I hope this is not the final draft that we see 5 yrs. from now. As much as we've worked on it, & as grateful as we are to the City staff for their assistance, this should not be interpreted to be a model ordinance, at least in our opinion. There's much to be done to improve it. Many significant legal issues that need to be addressed. But we're willing to try to do that on an ongoing basis to move forward to accomplish the City's purposes. So, as we say, it's a policy issue.

Ms. Seng: Let's give some other people a chance to talk then too.

Mr. Brooks: Thank you very much. And I would like to say the Mr. Sullivan, the Director of Government Relations for AT&T, is here as well. If you have any questions of a technical nature or policy nature, he'd be happy to speak to that issue. Thank you very much for your time & consideration.

Ms. Seng: Jennifer, I think Jeff has a question.

Mr. Fortenberry: Clarify a few things, we had talked about this issue at length as sort of a discussion that spun out of a permit that was before us recently but refresh my memory. Why was 15 yrs. chosen as the repermitting amount of time?

Ms. Dam: I'll let Steve address the time period for 15 yrs.

Mr. Huggenberger: Our original draft did not have a term to the permit. It was suggested by the Planning Commission & I think by some members of the Council that they wanted a term. And I believe the original term that was suggested was 5 & we compromised & placed that at 15. The industry will argue that they need 25 yrs. to make this work. So, we picked a middle ground.

Mr. Fortenberry: There use to be no time limit, correct?

Mr. Huggenberger: That was our original draft.

Mr. Fortenberry: Why are you requesting 2nd & 3rd Reading tonight?

Ms. Dam: We're requesting 2nd & 3rd Reading based on Planning Commissions scheduling. Currently, the Planning Commission's schedule we're working on is Feb. 9th. If we have 2nd & 3rd Reading today, applications up through Feb. 9th will be under the old ordinance. If we don't have 3rd Reading today, it'll be another two weeks out so it'll be into March before this ordinance can be applied.

Ms. Seng: Come into effect.

Ms. Dam: Right.

Mr. Fortenberry: I think a question was raised about other permit terminations. (Inaudible).

Ms. Dam: We have applied term limits to special permits selectively over the years. For example, soil excavation, curb permits. It's not unusual to have those expire after one or two years. There are other types of permits that we have put time limitations on as well so it's not unusual. However, we don't have specific time limits set out in the ordinance for permits at this point.

Mr. Fortenberry: Let me ask you another question about the process as to why you direct in the ordinance, utilizing the criteria of somewhat subjective language of "obtrusive", "unobtrusive", "preferred location", instead of a more traditional approach of zoning uses, permitted in certain zoning uses.

Ms. Dam: I'd love to answer that question.

Mr. Fortenberry: Sure. I assume it was to help the industry & provide a lot of flexibility.

Ms. Dam: It was to provide a lot of flexibility. Our thought, from the outset, was that we can't say there's absolutely one specific zoning district where a wireless facility would be inappropriate because you might be able to put one right in front of the Capitol & have it so hidden that nobody would know that it was there & it would be certainly appropriate. At the same time, we thought we can't allow them by right in all industrial districts. For example, there's a strip of I-1 zoning that goes through the middle of the Havelock Neighborhood that's old railroad right-of-way. If we allowed towers by right in Industrial Dists., a tower could go up there & have more impact on a residential use than perhaps in other districts. Because our zoning districts don't have equal characteristics throughout the City & I-1 isn't an I-1 isn't I-1, it all is dependent on the surrounding uses. We developed this type of criteria so that we could have the flexibility & make the distinctions. At the same time, we felt that it could be possible to have a facility in any zoning district & make it work.

Harvey Cooper, Abrahams Kaszlo Kassman Law Firm, Omaha, Nebraska, representing Sprint PCS: And I am going to try not to be redundant with

Mr. Brooks. Sprint does share many of the same concerns & I, too, wish to circulate a motion to amend, a portion of the amendment of the ordinance.

Ms. Seng: Now, is that different than what Mr. Brooks had?

Mr. Cooper: Yes, it is different.

Ms. Seng: Okay.

Mr. Cooper: This amendment deals with the collocation requirements &, specifically, proposed section 27.68.110, subparagraph (d) which is found at page 16, line 14 of the ordinance. This would be a substitution in its entirety for the proposed section (d). I have to agree with Mr. Brooks, we've come a long way with the City staff in finding an ordinance that although we're not in total agreement, we find that can be workable. But Sprint, too, must reserve in its rights that may exist when we take closer look at this ordinance both under Federal law, State law, &, of course, local jurisdictions. And, if need be, as time comes into play & as we find out whether some things workable or not workable, to revisit the ordinance process again. And we thank you for that. What's the objective of Sprint...&, by the way, if I could, I'd like to reserve...have 10 minutes if that's possible?

Ms. Seng: Try that.

Mr. Cooper: I'll try...

Ms. Seng: Okay. We have an awful lot.

Mr. Cooper: I understand that. Sprint's objective like the other carriers is to build a good system to be a good neighbor to the municipalities that we are in & to provide quality service to the citizens so that, of course, they want to buy our system & to use Sprint's system & also to develop wireless systems that are useful to them & to the citizenry. I'm going to focus on co-location. Subsection (d) does deal with co-location & it is a policy that Sprint does try to foster. I've been involved in the wireless business since 1995 before the first spade of dirt was turned in the system in Nebraska. I've been in it since the ground up. And I know you see all these towers up there. Well, frankly, what you see are really the tip of the iceberg of the number of towers. Most antennas are invisible to you. Most antennas are actually rooftops or being hung on existing communication towers or other towers around the City. Only a smaller number are actually free-standing monopoles. But monopoles have to be built in places where we can't get on rooftops or, for one reason or another, there isn't another site available for co-location. Co-location is a desirable thing for the carrier for a number of reasons. First, it's faster to build them. We don't have to find land, build a pad, build a tower, do all those things. Secondly, they're cheaper to build. Thirdly, they're less obtrusive for the community & since we want you to be customers of Sprint, as does AT&T of AT&T, we don't want to interfere with your visual impact. So, that's very important. And what we do try to create is have a win-win situation by co-location. Your ordinance, in subsection (d), does deal with co-location but there are some areas of concern there. And I have to comment a little bit on the first part of what Mr. Brooks said, what the carriers seek is predictability, just as any other business seeks predictability. We want to know what you want. And we want you to know what we can do. The systems are not the same. Our needs are not the same. But we try to have some predictability going forward so we know what we can do. Subsection (d) requires co-location if we build a tower. If the tower is

up to 100', then the tower is to, in theory, hold the applicant provider plus one other comparable provider. If it goes over 100', then it is to hold the applicant provider & two additional comparable providers. So, a hundred foot pole holds two providers, in excess of a hundred is three providers. And that's fine. And we traditionally do build towers that are capable of holding additional providers & whatever you say, we'll build. Our problem is with the land use that surrounds the tower. Because the current ordinance says that area shall be reserved for other providers equipment near the base of the applicant's tower unless co-location is shown to be infeasible. This is a requirement that you are placing on the carrier, as I read it, to say to the landlord, okay, we have a permit for 15 yrs. & we're going to build a 125' tower which means there has to be space for three providers on the tower but also there has to be enough room on the ground, landowner, for 15 yrs. for two more carriers to come besides ourselves. And we may take a space initially that's 50 x 50 or 25 x 30, whatever the land use is. And if I have to provide for two more providers &, by the way, I have to know what they're space is & I frankly don't know what all the carrier's space is & that changes every day (inaudible) equipment & base equipment changes. I have to reserve up to three times the ground space from you, the landlord. Okay, now, that creates several implications. The first implication is you may not want to do it but we understand it has to be co-location. But it binds you for a period of the permit to hold that space open for other providers. And also, of course, you may come to me & say okay, you want that, you're going to pay triple rent. So, instead of paying a base rent, I've done a calculation & I've conferred with the AT&T representative, Mr. Sullivan, & we both agree that over a period of 15 yrs., in today's dollars, without escalations which are typical in a lease is it would be an additional cost of around \$360,000 a site in additional rent that we would have to pay. Now, let me talk about co-location. We all agree co-location is a wonderful thing. A co-location is dependent on someone else wanting to come onto the tower. Just because I build a tower that's capable of multiple carriers does not mean that another carrier needs that site. Their technology may be different. They may have an already existing site nearby. They may not be as mature in the market as we are. We all have different means & needs. So, although we all agree that co-location is necessary & we build for co-location, it just doesn't mean that I'll have two more carriers knock on doors. And that's been by experience, by the way, in the last year & a half in this area & in Omaha but we can always seem to find a second carrier. But it's very difficult to find a third carrier. Why is that? Alltel's mature, they're not looking for towers. Airtouch is mature, they're not looking for towers. Sprint is relatively mature, they're looking for some towers. AT&T, brand new in the market, they're looking for as much as possible. US West Wireless, they're looking for sites too but they want to use the right-of-way. They want to go on different poles, lighting poles, different technology. They really don't want to go on monopoles. Nextel, they're fairly mature, they're getting mature, they're about to turn on, they don't need anybody else. So, I don't know where these other carriers are that we're going to have to reserve this land & pay this money for. Now, I talked to this thoroughly with Mr. Huggenberger & Ms. Dam & they agree with our position. And they agree that what we're now looking for in



terms of what "reserved" means is not that we have to legally commit the landlord right now to say you will lease to these people. And the landlord will come back & say okay, you will pay this lease money to us right now even though someone may never co-locate. What we've suggested is that there be a provision inserted into the lease & also that a statement be provided signed & notarized by the applicant & the landlord saying that we will negotiate & we would say we will negotiate if land is available & currently there is land available. But because we want predictability, we have a difference of views. We believe that this should be in the ordinance. They believe it doesn't have to be in the ordinance, it's something that could be handled administratively. But, again, there are changes of personnel, there are changes of Council.

Ms. Seng: I think you need to wrap up here.

Mr. Cooper: Okay. And we would like to see that there. The other thing too is in the amendment we put down to clarify that infeasibility & it's economic infeasibility. So, that is the motion to amend that we would like to see & begging your indulgence.

Ms. Seng: Any questions? Jennifer & Steve, I think Jeff wants to ask.

Mr. Fortenberry: Just would you comment on the testimony?

Ms. Dam: I think we feel that the statement on co-location is something that could be supplemental to the application & that we would accept it with the current language in the ordinance but we would not...we don't care to see it inserted in the ordinance. We don't feel that it's appropriate language to have in the ordinance itself.

Mr. Huggenberger: The issue is what is meant by "reserved". That can be by lease, option to buy, or it can be this. If we put this in the ordinance, it will always be this. That's my concern when we have a lot of other flexibility.

Mr. Camp: Steve, I guess just by merely talking about the fact here of the idea that Mr. Cooper's brought forward of reserving extra land, we're now throwing into the field of ambiguity what "reserved" means. And, if anything, I'd rather see us be more specific in our drafting & our enactment of an ordinance rather than leaving the word "reserved" in this case or the "obtrusive", "minimally obtrusive" & so forth open to vagaries of legal interpretation. It think it's important that we adopt an attitude of facilitating business & encourage this for the benefit of our citizens. To me, a large part of what we're looking at tonight is to develop a competitive atmosphere so that the citizens of Lincoln have opportunities for choices &, as a result, have opportunities for competitive rates.

Mr. Huggenberger: Well, I think we have demonstrated an attitude to try & work with business on these kind of things. Harvey & I worked this statement out & it's my opinion, at this point in time, that that would satisfy the reservation requirement. My only concern is if you put it in the ordinance, that's what everyone's going to do. That is not what every provider currently has an opinion on right now. Some of them want to purchase more land. Some of them want to lease more land. For whatever reasons.

Mr. Camp: I guess I'm getting confused here. What would prevent them from doing that?

Mr. Huggenberger: Nothing if we interpreted "reserved" to also mean that as well. I mean, do you want to put all the examples of what "reserved" means in the ordinance? That's my concern. If we just put one example in, that's what everyone's going to do.

Mr. Camp: Mister Cooper, would you mind responding? I'm confused here because it sounds like Steve is saying the two of you have come to an agreement.

Mr. Cooper: Well, we've come to agreement as to what...this language would be acceptable through the application process. We have not come to agreement as to whether or not it should be in the ordinance. The problem I see in here is to another part of it is that we're putting a lot of restrictions on the landowner in Lincoln from being able to use his land for 15 yrs. if he thinks (inaudible) is interpreted by someone else in 5 yrs., that "reserved" means you better have the lease for an option. So, if you have some land that you're holding, triple the land that you're holding for two other providers that may or may not come in the 15 yrs. & that landlord wants to build onto his building, wants to do something else with their building or their property, they can't do it. And that's from the standpoint of the citizen of Lincoln who has land. On our side too, sure, if we want to take additional land for some reason, sure we can always do it. In my experience we try not to lease an additional square foot if we don't have to. And we don't like to...you know our view of co-location is we'll build the tower & provider if you want to go co-locate, strike your deal with the landlord & that's good for the landlord too because the landlord, in 5 yrs., is going to get a better rate for market than they will now. That's absolutely true 'cause two years ago was not what it is today. Now, we think it's beneficial for everyone to do it that way.

Mr. Cook: Actually, if we were to put something specific in this ordinance regarding what "reserved" means, I would probably not make it cover this particular language. It makes me uncomfortable. I mean it's a nice good faith agreement. I mean saying that landlord intends to cooperate, what if the landlord sells the property to someone else who is maybe not so intent on cooperating. Are people bound by cooperative agreements?

Mr. Cooper: We file a memorandum of lease & that memorandum of lease would be binding upon the subsequent owner of the property for the term of the lease.

Mr. Cook: But, cooperation is different. I mean even though a landlord...this landlord may be less or more cooperative than another, it's hard to gauge comparability in that whereas if you actually have an option on the land, that's a legal requirement that goes with it.

Mr. Cooper: But there's the other thing & that is there may not ever be another co-locator in the area. That's the central point. I mean we don't have a lot of carriers that are breaking the doors down again on poles. I usually know when I have a second carrier. It is very, very difficult to find the third carrier & to say for 15 yrs., landlord, you're going to have to hold it because there's initial build going on right now & in three years most of the market will become mature. But you have to hold for 12 more years even though someone else may never come & the land owner is going to have a restriction on the use of their land.

Mr. Cook: But, we're already into the whole restriction on a land discussion. We had the discussion regarding the first proposal for an amendment which is what kind of restrictions would be placed on this landlord's property regarding buildings & trees & any other screening that might be used at this time to satisfy some unobtrusive location requirement. That's the same kind of thing here. I don't see that it's especially burdensome. I don't understand what you mean when you say restrict their use of the land. It seems to me that that sounds more onerous than it really is because they could do pretty much anything with the land as long as they agree that if another provider comes along they will allow you to use that land & I don't know what kind of financial arrangement you'd work out ahead of time perhaps. But, as long as they agree that that land will be available, they can put anything on it. I mean except for a permanent structure because they would know they might have to tear that down. The likelihood of them building a building next to your tower site may be small. We don't know. But aside from that, they can use it for almost anything else.

Mr. Cooper: No, I disagree with that just from experience. From experience, I know people that will not lease an extra square foot because they say I may want to take my industrial building & add on to it because I have a plant & I might want to add a line & you're going to restrict me from doing that. So, that's the very issue that way. Plus, again, for us to be paying rent on the (inaudible) which may never be necessary is a pointless use of money.

Mr. Cook: But you wouldn't be paying the full value of the land because you're not using...you'd be paying for some option which, presumably, would be less.

Mr. Cooper: Well, options typically are for 30, 60, 90, 100 days or a year. They're not 15 yr. options. At that point, a prudent landlord, if I were the landlord, I would say, uh, uh, not for 15 yrs., you want to tie me up for 15 yrs., you're paying rent.

Mr. Cook: Another concern would be this is very specific language & I agree with Steve Huggenberger, I mean it makes me uncomfortable to stick this kind of, I guess, interpretation into the code. But what if Alltel or some other provider doesn't care for this language specifically. What if they'd prefer to have their own? Have we just tied them down & said you've gotta put this in your contract with the landowner?

Mr. Cooper: I can represent that Alltel's seen this language & is agreeable with it.

Mr. Cook: But we don't know whether some new provider coming to town would necessarily be.

Mr. Cooper: No. There's always an amendment process to the ordinance too, if necessary. I would think every provider would be happy with this language because the language says we are willing to work on co-location. Co-location is the policy & will be the policy of every municipality. It's not a shock to people to co-locate. And the fact that everyone is acting cooperatively which what this language is is a benefit to every provider rather than having to pay rent on unnecessary land for 15 yrs. (inaudible).

Ms. Seng: I believe Jeff has a question for Staff.

Mr. Fortenberry: I want to take a step back & try to get a handle on what we're talking about in terms of the impacts on the community. I

know you've worked very hard to try to find the right balance of minimizing impacts without imposing undue burden on the industry &, in fact, encouraging development of the industry & the industry seems to concur with that. But in regards to the specific changes that have been mentioned, are there...help me with this. And this might change tomorrow, I understand, given the nature of the technology as its moving rapidly, but are there certain classes of this technology that could fall under criteria that they suggested versus others that wouldn't such as if you have some type of very minimal, small antenna on top of a building & it's unobtrusive in a preferred space, that becomes just an administrative renewal versus something that's much more substantial, stand alone monopole over a hundred feet. Are there classes of these types of equipment or is that so rapidly changing for us to try to define that would be just fruitless?

Ms. Dam: The technology is changing very rapidly so I think if we try to define something today, it would be very different 5 yrs. from now. So, I think that's one of the reasons why we need to have some flexibility for interpretation. In terms of the impact, US West is coming onto the market. We expect 55 sites to be coming in in the near future. My understanding is that Sprint, I understand, has another 12 sites that they were just approved to start locating. They also have about a half a dozen in the works. My understanding is AT&T has another dozen or so sites that they're working on. Nextel has another three to six sites that they're working on. Cellular One....

Mr. Fortenberry: And when you say sites...

Ms. Dam: I don't mean towers, I mean sites. They might be locating on a rooftop. They might be co-locating. They might be looking for a new tower.

Mr. Fortenberry: Are drawing those distinctions perhaps a way to meet some of the concerns of the industry & adhere to what you're trying to do in terms of having enough flexibility on the part of City government to say if conditions change, in other words, near a monopole, that's very substantial, that use to be acceptable & land use has changed around it & now all of a sudden it's in the middle of a neighborhood or something.

Ms. Dam: I think it would be very difficult for us to draft that language on the fly tonight.

Mr. Fortenberry: For the better, I understand.

Mr. Cooper: No, I don't disagree with anything Jennifer said. We can give you dozens of examples today of different technologies to camouflage, screen, hide & every one of them's different. Trying to craft something that applies to all of them, we found it nearly impossible which is why we went to some of the...

Mr. Fortenberry: No way to even classify the types of antenna or the types of wireless facility?

Ms. Dam: It's very difficult. The rooftop facilities vary. Even just the rooftop facilities in there obtrusiveness & the types of antenna that are use & how they're mounted & how they're screened.

Ms. Seng: Paul, will you call & see if there's anyone else that wants to testify on this because then I think I want to say something on this. Guess we don't have to call you.

David Hunter, 1023 Lincoln Mall: That's alright, Paul, I'll handle this. I want to speak as an individual & also as a member of the Capitol

Environs Commission & address one of the issues that Mr. Brooks & the others brought up regarding land use & so forth. We, on the Capitol Environs Commission, as recently as the meeting before last, are now discussing the reevaluation & the expansion of the Capitol Environs as it sits. Times change, land uses change & corridors change, entryway changes. And, as a result, the 15 yr. life, I sincerely believe, is ample because of the changes that do take place. And it's beyond just cutting a tree down or removing a building even though those are significant. The whole lay of the land, the way the City configures itself, & the way that entryways are developed & the way corridors are developed, we owe it to this community to reevaluate this. And with all due respect, I would suggest to Mr. Brooks that he read the current billboard ordinance that you passed because a lot of these issues that are being brought up, you passed seven to zero in the billboard ordinance. You took the bold step of telling commercial enterprise [break in tape]...it's positive. And the issue of subjectivity was brought up. And if you think for one minute, that any of us going to the Planning Dept. & the Planning Commission to try to get a development through is not subjective, I don't know what is. How many times have developers been asked to donate park land? How many times have developers been asked to donate hundreds of feet of right-of-way of land that they paid for? What's the difference in that & asking for land to be reserved for future use for future location & to pay for that? We pay for it every day in the development business. Both I & my clients do. It's no different. The other issue is technology & the economic scales. We, in Lincoln, Nebraska, right now, have probably one of the worst cellular systems in the United States overall. The service is pathetic. There will be people that will take serious offense to this statement I just made. But the economy of scales speaks for itself. This is only so large a population. There's only so much market share. Think about it. Five or six carriers in here for this market share? There are people here that claim we have digital service. We do & we don't. I travel all over the United States & I guarantee you the service is far superior than it is here. It will get better & it's going to get better. But it's important for the 15 yr. evaluation for a lot of reasons. And one of those reasons is technology. Technology's going to change. You talk about service to the customer. It's important that someone come to the table & perhaps be forced to the table to say you can't have that tower any more. They conceivably would be forced to come to a better technology & a more current technology to service its customer base. And if you think for one minute that tower's really going to be a feasible form of technology in 15 yrs., then you aren't up to date because I think the odds of that are pretty slim. And, as a direct result, I think there's a lot of reasons to retain the 15 yrs., the total evaluation & also don't let the land use issue cloud the issue here. It shouldn't. We go through it every day. And look at your billboard ordinance. There's a lot of similarities here. There's not a lot of differences. I understand the competitiveness. I understand the issues. I understand the new carrier's coming in at the 11th hour. But, at the same time, we all go through these issues every day. And I want you to think about the technology because these people have got to be brought to the table. We do not have the best technology in this community that are in other communities. Thank you.

Mr. Camp: David, I'm glad you brought up the technology because as I sit here listening to everybody testify, that comes to mind. I think of the lifetime of a computer anymore seems to be 18 months, the chip or whatever, & I guess one of the things in the proposed amendments here that the attorneys have brought forth is this...Mr. Brooks item was that there couldn't be abandonment & I think I would agree with you that the way technology is unfolding, we may be at some other satellite type technology that none of us really knows in this room but if we look back 15 years, technology was a lot different. What I do want to do though is make sure that we're crafting & enacting an ordinance that encourages that competition. And I'm not as aware as you of other communities as far as some of the cellular systems. And I take what you say as truth. But I want to encourage the best technology here & I think we do that by not charging as much of an entry fee. And as Mr. Cooper has said, I guess it does concern me if there's a \$300,000 price tag on one of these monopoly sites for that. And I guess how do you reconcile that in the competitive environment?

Mr. Hunter: Listen to what I said, you asked myself & my clients & other people to donate park land, easements, right-of-ways that I guarantee you far exceed \$300,000. There's no difference. And to address the technology, if I'm here for a small market share, I'm going to leave up, standing, if I can, the least expensive technology & the least current if it just keeps my base amortizing it out.

Mr. Camp: Is that really possible though, & pardon me for interrupting, but in this day & age, how do you stay competitive if you're driving a Model T & everyone else is driving a super dooper Thunderbird or something?

Mr. Hunter: We're doing it now. Maybe it'll change in the near future.

Mr. Camp: I guess I would tend to agree on that but that's philosophical. And you mentioned...I understand what you're saying on developers giving up park land & so forth. Aren't we looking at for these monopolies, though, perhaps smaller property owners who might have...

Mr. Hunter: I know of no property owner in this community that wouldn't be more than happy to lease the space that's being required by this ordinance. I think it's a bogus argument. I think it doesn't carry any water. And, as a land owner, & having knowledge of a lot of land owners, do you hear any land owner here coming up, testifying to that? No. You hear the people coming to testify that don't want to comply & don't want to pay. But you don't hear the landowners. I would be more than happy to reserve whatever is required & they can pay. That's economy of scale.

Mr. Cook: In any case, the issue of the extra cost of the land is taken care of by the agreement that Planning says...in which Planning says they will allow this to satisfy the requirement for reserved space. I think it's way to weak. But, if that's their interpretation, if that's what the Planning Dept. or the Law Dept. chooses to do, then this argument is even less significant. I mean this is already a case where City staff has said, we agree, we'll go along with you, & yet the provider says, we're going to go in & try to make this part of the law anyway just to eliminate any possibility of flexibility on that issue in the future & I don't see the point if City Staff has already said yes. They won't take

yes for an answer.

Mr. Hunter: I encourage you to pass this ordinance tonight with the Emergency Clause & implement it just for the reasons that Jennifer brought up. You have the right & the authority to amend this at any time. And if you think the customer service is suffering is a direct result of you implementing this ordinance & passing it tonight, then that should be brought forward & you should amend it to make the customer service a better program. But to not pass this tonight, in the form that it is, I think is a disservice to the community & a disservice to the people that have been involved in this because it should work. And if there's a piece of it that doesn't work, then you have the right & the obligation to correct it. And there's no harm in sending this forward.

Mike Morosin, 2055 "S" St., Past President of Malone Neighborhood Assoc.: And one of the points we discussed not too long back when a pole was put in our neighborhood was the sand elevator will block its view. Well, in about 15 yrs. time, that sand elevator will probably come down. So, we may need to deal with those issues of the building not being there & landscaping. And I support, you know, this review of this in 15 yrs. to take a look at it because Lincoln Lumber may move within that 15 yr. time & then we have a pole sitting there & maybe we want to do something to hide that pole & take a look at it. Bringing these amendments forward, the public hasn't had a chance to review the amendments so I don't think you should accept those amendments in the 11th hour. And, Mr. Camp, when you said Model T's & super dooper Thunderbird, I think the best choice would be mass transit. If we do that, that would eliminate the other problems. So, thank you very much.

Mr. Cook: I'd like to ask that we act on Items 3 & 4 at this time because there is staff here & a number of people who are going to spend the next few hours waiting for us to act. And I think it would be nice to allow them to know outcome at this time since we are accelerating this already with 2nd & 3rd Reading today (inaudible) normal procedure.

Ms. Seng: Dana, Paul, is this allowed?

Clerk: I don't know if you need to suspend the rules to take the agenda out of order. Do you or do you not?

Ms. Seng: Put 3rd Reading for these two items. They're the only two 3rd Reading.

Clerk: It's on 3rd. They're requesting they vote on it right now. [Discussion with the City Attorney] You don't need to suspend the rules? We need a motion to suspend the rules that Item 3 & 4 that we vote on it at this time.

Mr. Cook: I move to suspend the rules & vote on Items 3 & 4 at this time.

Seconded by McRoy & **LOST**, due to lack of five AYE votes, by the following vote: AYES: Camp, Cook, McRoy, Seng; NAYS: Fortenberry, Johnson, Shoecraft.

This matter was taken under advisement.

**\* 8:05 p.m. - Council took break.**

**8:15 p.m. - Council Reconvened. \***

APPROVING A LEASE AGRMT. BETWEEN THE CITY & PHANTOM, INC. FOR THE LEASE OF CITY OWNED PROPERTY FOR USE AS AN IMPOUND LOT FOR TOWED VEHICLES. (IN

CONNECTION W/00R-5);

APPROVING A 4-YR. CONTRACT BETWEEN THE CITY & PHANTOM, INC. FOR VEHICULAR TOWING & STORAGE. (IN CONNECTION W/00-6) - [Break in tape - following taken from notes] Vince Mejer, Purchasing Agent: This contract is for renewal. The Lease is for expanding facilities.

Ms. McRoy: Can we make an amendment to the contract?

Mr. Mejer: With the towers or the lease?

Ms. McRoy: With the towers, I would like to not have them go down Charleston.

Mr. Mejer: With the new impound lot, they will be using Sun Valley Blvd. 90% of the time.

Ms. McRoy: I'd like that to 100% of the time.

Jerry Shoecraft, Council Member: [Tape picked up]...room that were here 5-6 yrs. ago & including Phantom, Inc. And I know Sarah & I supported back then that we needed to open up the process & give other people the opportunity because it's such a small competitive environment here in Lincoln & I was quite surprised & nothing against Sarah & (inaudible) 'cause they've done a good job but, at the same time, I fought for the same cause for them, 5-6 yrs. ago, to allow them to get part of the piece of the pie & be involved in it. And I suspect why everybody's here tonight is because they want to have an opportunity to be involved in the process & get a piece of the pie. And that's why I was a little shocked when I saw this forthcoming. It was my personal feeling whether Phantom, Inc. gets it again that there needs to be a process where everybody has the opportunity to get a piece of the pie & not just automatic renewal. I'm just saying that so that when we come up with food for thought, because we went through this 6 yrs. ago, & that was our compelling argument to open it up then because prior to that, someone in Lincoln dominated this from the City (inaudible) & we sat here & changed that. But now we're doing an automatic renewal & I don't agree. (Inaudible) but I fought for them 5-6 yrs. ago too.

Mr. Mejer: It's not an automatic renewal.

Mr. Shoecraft: Well, we're renewing it though.

Mr. Mejer: It's an option to renew that you, as City Council, can say yea or nay to. This was in the bid package 4 yrs. ago when we bid it out in '95. And, at that particular point in time, everybody had the same option. Everybody had the option to bid on a 4 yr. contract with the option to renew for a 4 additional yrs.

Mr. Shoecraft: I support this whole entire industry, Sarah's company, Phantom, everybody sitting here. But I still feel that they all should have opportunity to submit new bids & be part of the process & get a part of the process. And maybe it may end up that Phantom gets it again but at least that should occur. And then I will feel good about this situation. So, just food for thought 'cause I already went through this once.

Mr. Mejer: Right. One of the other reasons that we have chosen to ask for a renewal is with all the baseball stuff going on, it'd be very difficult to train a new wrecker service at the same time that you're moving your impound lot & changing your whole operation.

Mr. Shoecraft: I can give them a back yard & their experience at what they do & they could make it work, anybody sitting in this room. It isn't because of baseball because they've been in this industry & know it



better than any of us & if you give them a lot, they can do the job. So, I don't necessarily agree with that. I just think that, again, the process should be open so that they have an opportunity. "Opportunity", that is the key word. And then whatever happens thereafter, we all can live with that. But at least they have the opportunity. I just want that on the table, food for thought, as we come up & talk about this.

Mr. Mejer: I understand.

Mr. Fortenberry: Let me just clarify, the initial contract was for 5 yrs., then an option to renew...4 yrs. with an option to renew, what had been the contract prior to that?

Mr. Mejer: Prior to that was 4 yr. contract that basically just kept getting renewed. Primarily...well, it was bid out but it was a process of nothing because no one had land in the proximity of downtown where we need the land for vehicles that are towed & we were sort of held captive way back then & we chose, at that point, to enter into the impound lot facility at that point so that we were not held captive & that everybody could have the right to bid on the contract when it came due.

Mr. Fortenberry: And why was 4 yrs. chosen?

Mr. Mejer: Payback for buying wreckers. And, actually, the 4 yr. period was to the benefit of the wreckers so they could amortize the cost of their equipment out.

Kevin Anderson, President of Phantom, Inc., no address given: Four years ago we signed a contract with the City in the belief that we had the four year renewal providing that the Police Dept. was happy with our performance & we were happy with the situation we were into. And, obviously, now we're here with that renewal time & the City has expressed their interest in us going four more years & we've expressed ours going four more years with the City. When we bid this originally four years ago we kind of bid it over an 8 yr. term & anticipated an 8 yr. term because of the situation we were given. There's very few companies with the workforce & the wreckers in order to run this operation. It's a very demanding operation & I think a coalition of several companies is not an advantage to the City for liability reasons, keeping security, many things that a person might not realize are involved with the tow lot & the facility & the security with the facility & the accountability of one company & its employees for one finger to get pointed at in case something goes wrong. I believe in the rebid as we spoke & I've been...I'm thankful for the opportunity we've had to deal with the City & had the last four years. And I guess our outlook is to go for four more years & then go for the rebid then. But, that's about all I've got.

Jim (Inaudible), Vice President of Phantom, Inc., no address given: Four years ago, we went in on a group partnership to do this towing. We found a lot of problems in it as a group. We offered it to other people. Other people didn't want to carry some of the burdens that the City tells us that we have to carry, the million dollar liability, very, very expensive policy. Some of the other things that we qualified on our trucks that we have to carry, some of the other towers didn't want anything to do with it. Years past, Kevin & I had separate companies. I had S & S & he had Capital Towing. And what we found with a couple companies...well, I invested my money, Kevin invested his money into it, what we found was that we were fighting over things that went on & the City wasn't getting their benefit of both of us because we were arguing

who was going to do what, who was going to do this, that or the other thing. So, the City actually took the brunt of it. What happened here is Kevin & I merged the companies. We took my trucks, his trucks, merged it all together. One company has to run this deal. You've got way too much stuff that you deal with on an every day deal. It's a 24 hr. a day deal. Someone has to be in charge. And right now, that's Kevin & I. And we're there 24 hrs. a day. We are...somebody is in command. And it's over a lot of things that a lot of people don't understand. Evidence, you know, we deal with that. Protection of the cars. You know, who tows the cars. (Inaudible) liabilities in the lot. If you have several different companies towing into your lot or towing out of your lot, somebody hits a car & drives away, who's liable for that? Especially if they don't say anything.

Mr. Shoecraft: And I totally, totally agree with you. I think Capital does an outstanding job. I'll say that in a heart beat. And you just made some points of why you do a good job &...of liability & wreckers & etc., etc. & saying that should be demonstrated through a bid process so that you, again, if you're better than everybody else, you get it again. I just sat on a task force where we were going for a financial advisor & "X" number of people, companies, came forward, submitted proposal, etc., etc. But our previous financial advisor demonstrated that they have the best records, the most experience, etc., etc. & they got...they were awarded the contract again. But the other companies appreciated the opportunity at least to have a chance to be part of the bid process. And that's why I would think that that's what we need to do here & you will demonstrate, hopefully, I don't know, that you do have the best product, service & you will get it. But, at least they feel that they've had opportunity at least to be part of the process & submit bids. See, that's where I'm coming from.

Mr. Anderson: I understand.

Mr. Shoecraft: I think you guys do an outstanding job but, so, demonstrate that through the process.

Mr. Anderson: Many companies joined together, will not.

Mr. Shoecraft: Beg your pardon?

Mr. Anderson: It will not work. If you join many companies together, who's the Chief?

Mr. Shoecraft: I'm not saying join any companies together.

Mr. Anderson: And this is the argument that we're going to hear here in minute. It will not work because who's in command?

Mr. Camp: I have a question for you. What's one of your towing trucks cost?

Mr. Anderson: A new truck today, fully equipped, you'll run \$50,000 to \$60,000.

Mr. Camp: And between, well, I guess now that you're merged, how many does Phantom have or Capital Towing have?

Mr. Anderson: I think we're 13? At times, we run all 13 trucks for the City.

Mr. Camp: How many drivers would you employ?

Mr. Anderson: Seventeen, roughly. That's drivers. That's not any of the office personnel.

Mr. Camp: Is that per shift or is that throughout?

Mr. Anderson: That's throughout all the shifts. And, you know,

then Kevin & I also fill in for drivers when it does get bad. So, as I said, it's a full-time job.

Sarah Schwartz, Treasurer of Phantom, Inc., no address given: And I need to bring up one point. Jerry made the comment that with the experience people in this room have, they could get in a truck & do the job. That's far from the truth. Towing is one of the least parts of this. There is so much paperwork involved. We have reports we have to turn in to the Police Dept. on a monthly basis. It took us a year to perfect those reports. Now, we collect all the parking ticket money for the City. It took a long time to learn that process. We have auction process we have to go through. Towing is the least of it. And we've been doing it for 4 yrs. & everyday we learn something better, a better way to do the paperwork, a better way to do the auctions. It's not something that you can drive up in a tow truck & do the job. And I know for a fact, I mean, I talk to the property room daily with evidence & holds on vehicles. It takes a long time to learn how to read those property reports. The officers don't always mark what they want done. And we have to be able to read those reports & know that just because they towed it for no plates, that means they want a proof of ownership hold on it. They don't always mark that. It's a long term process. And I know it's one that the property room's not looking forward to going through again right away.

Danny Walker, 427 E St.: I had a question more than a stand of opposition. I would like to know who assumes liability should something happen in regards to these vehicles? We all know this sits in a floodplain. This is going to be discussed for on the City Council Agenda. If something happened to those vehicles, & they get over into the Salt Creek, I guess probably Dana Roper, but I would like to know by utilizing this contract process for this towing company, this Phantom Towing, does that release the City of liability & responsibility should something happen?

Ms. Seng: We'll find that out tonight.

Terry Hinkle, L & L Towing, 3029 N. 48th: We have several questions. Going to pass this out. It is a petition from companies here. I'm going to go ahead & read it so everyone in the audience knows. Our commitment is the City towing contract has been advertised in the past by mailing out specifications & a bidding process packet to all towing companies. Each time it has come to open & it has been done this way & the contract began back in 1977. All of a sudden today, there's a public hearing on a contract bid for the towing contract. It is on your agenda for approval. I did not receive anything in reference to the bid & I am interested in the contract. I hereby protest approval for the bid that is in front of you, the Council. I further ask the Council to disapprove the bid in front of you today. And I would also ask the Council to investigate this matter so that the procedure followed can be clarified. We feel this is not fair & it is not just to us as tow companies. As Mr. Shoecraft said, everybody wants an opportunity. Whether it can be done or it cannot be done, we want the opportunity. We want to say, hey, we got a chance, we can do it. That's what we want to know. Also & further, on your resolution here, which you've got Resolution A, it says here "Whereas in the City desires to renew a 4 yr. contract with Phantom, Inc. Vehicular Towing & Storage Services". How can we renew a contract that's been

expired since 9/30/99? It's been 3½ months. If there was a renewal, we felt that the renewal should've already taken place. If you go to the second page, under the contract, as it is attached here, it said it was published & it was advertised. None of us that is on this list have received any advertisement & far as a bid packet goes. It also goes down that the lowest responsible bidder for the said work for the sum of sums named in the contracts proposal, a copy of which is attached hereto & made a part of this contract. What we want to know is how many bids were received & if only one, where is the fair comparison to the bid? We also noticed that the contract has been changed from a \$45 tow on a basic tow to \$50, on page 3 of the resolution. And then also the dollies have been removed off the previous contract. To us, this changes the condition of the contract. So, we ask how can you renew something that is being changed? It should be put up for re-bid. Okay, also, on page 5, I know I'm moving quite fast here but I don't want to take up your time 'cause we're still trying to figure out where to put the antennas. But, on page 5, it says down here required equipment for the personnel & the duties of this contract. It says the company that is contracted here must have 6 power-winch equipped tow trucks with all the stuff that they need, safety devices. Phantom, Inc. owns no tow trucks. And so, if they are doing the work according to this contract, who are they subcontracting it to? It's not stated in this resolution who their subcontractors are or anything of that nature. That's what we would like to know. Also, if we move on to page 7, it also makes as this gentleman was saying about the floodplain lot, we feel that this needs to have approval. And, according to this, needs to be okayed by the City. If there is a flood at the new impound lot or at the old impound lot, where is this authorized designated area that the cars are to be moved to in case of floods until the flood waters abate. That's not answered in this contract. But if we move on down to the insurance claims or loss damages, & I'm going to bring up another item here, the contractor has to carry insurance. We know that the contractor, whoever is towing the cars for the City right now, does have insurance. But this insurance, according to, & I pulled this off the internet, this comes from the Finance Dept. for Procedures to Bidders, Instructions to Bidders, all certificates of insurance shall be filed with the City of Lincoln on the standard Acord Certificate of Insurance which additionally insures the City to protect you so in case something happens, you're not held liable. All this needs to be on file with the City. I have spent two days down at the City & there is no current insurance file on file with the City for Phantom, Inc. The last insurance that was on file was 10/97 & it shows that it was cancelled. And so, in lieu of the contract, that is suppose to be on file there. I guess I'm out of time, I got one minute. Okay, what we want to know basically is the City Council, we feel, should allow it a fair bid & that in lieu of the contract regulations, specifications & everything that you have set forth & how things & promotions & everything is suppose to be filed, how it is suppose to be on file with the City Clerk's Dept., as I understood from the City Clerk's Dept., this is the department that keeps all records. Everything needs to be on file. There is nothing on file about Capital being a subcontractor. There is no file or lease agreement between Capital & Phantom, Inc. for leasing property within the City impound lot for Capital to do it's private business which is their private tow aways & there is no

insurance that is up to date on file with the City Clerk's Dept. Therefore, we feel this contract, being's it's 3½ months later, needs to come to a bid. And how we bid it & how we do it is how we'll do it. And, at that point, that is not a topic of discussion. But we feel that we should have a bid & every company out there should have the opportunity.

Jeff Wiese, We Star Towing, owner, no address given: And I'd agree with much of what Terry has said. And, so, I don't want to be rhetorical as well as the antennas go. And it's true that he says that the contract states we need 6 winch-type trucks to do the job & the people you find on your list that he's given you that we'd be willing & are ready to form a coalition to serve the City of Lincoln in contract, have more than sufficient, probably twice to three times the number of trucks needed to fulfill that. We will carry...we do now & will carry insurance & anything else that is deemed necessary by the City of Lincoln to carry out the needs of this contract. And it is upsetting that the contract never did come up since it expired in Sept. of '99 & to have one individual like Vince, & I assume it's one individual, that made this decision. Maybe it's more than one. Certainly not fair. It's just not a fair thing whatsoever & the bidding process has been the backbone of many proper ways of doing business. And I agree with Mr. Shoecraft completely on that that this same thing occurred 6 yrs. ago approx., why is it occurring now? There's no reason for it. Why did it happen again? I think that Mr. Mejer should definitely look at that position on that & try to think of why that happened. The two gentleman that are with Phantom, Inc. or Capital Towing have made a point that a coalition will not work. How can they make such a statement? They have no idea what we can muster. Another person said that we might not have the ability to do paperwork but of a lot of work I've done with the Nebraska State Patrol, I have no doubt in my mind I could work circles around anybody they have working for them on paperwork with motor vehicles that are towed by Lancaster County Sheriff, City of Lincoln Police Dept. or the Nebraska State Patrol. I don't see any problem with that. There shouldn't be any problem. I know, as a group, we can fulfill this. I'm not saying we're going to win it but we certainly need the chance to bid this to you folks &, most certainly, probably, do the job at a lower cost to the taxpayer who is footing the bill on this most of the time or part of it. And, you know, the contract was to be renewed, as it were, 4 months later approx. then why wasn't the contract renewed for the same exact amount of money? I feel it should've been if that was the case, if that's the way it's going to stand. I hope it's not. But if it is, I feel that'd be the proper way of doing it.

Leonard Hernaud, Century Towing, 3219 S. 10th St.: Thanks for the opportunity to talk to the Council. We, a few years ago when the contract was yanked from Lincolnland, helped with the four or five companies that banded together to get the City through the rough waters, shall we say, of going from one contractor until it was bid. We felt that it worked very successful that way with having four or five companies work together. Again, I lease a building & if I have an option for renewal it's at the same price for additional year or two years & I don't feel that changing the price without a rebid is fair. Thank you.

Ms. Johnson: Dana, can I ask you a question? I, personally, don't have a problem with opening things up for bid & stuff but if we had made, in the initial contract, a 4 yr. renewal, where are we, as a City, liable

if we decide to break that, in the very beginning? Are we?

Dana Roper, City Attorney: We have the ability to renew the contract. We have the ability to say 4 more years. If we choose not to...

Ms. Johnson: We could be liable?

Mr. Roper: We're not liable. That's just a decision that we would be making.

Mr. Camp: Dana, in the contract itself, originally, how did the language...how was it worded? And, perhaps, Vince can help on this as well. But has the Phantom group met the hurdles so to speak or the qualifications to have it renewed?

Mr. Roper: The period of 4 yrs. with the option for renewal for an additional 4 yr. period upon mutually agreeable terms & conditions, approved by the City Council. So, the original agreement provides for a 4 yr. renewal term upon mutually agreeable terms.

Mr. Camp: Which, I guess, with my legal background, then that's something of a good faith effort to renew but not mandatory on either party. Would that be your interpretation of it?

Mr. Roper: Right. I think certain changes were made. The dolly provision was changed. Vince can explain that.

Mr. Mejer: More & more vehicles are being required to be dollied because they're front-wheel drive vehicles. At the time of the original contract & for the first 4 yrs., it was \$45 a tow plus an additional \$25 if it was dollied. With, over time, the more front-end vehicles we received many, many complaints from the people that were being towed that \$70 was too much. So, what we've agreed to is a flat rate of \$58. So, in essence, those people that have front-wheel drive vehicles, when they're towed now, they will pay \$12 less than they were paying four years ago.

Mr. Camp: Or the person with rear-wheel drive is paying \$13 more?

Mr. Mejer: Yeah, you're right. Gotta have the good & the bad at the same time.

Mr. Camp: Life isn't fair as they say. Vince, couple quick questions. One of the individuals testifying mentioned something about the current provider doesn't have 6 winch trucks & I guess I didn't quite follow that. Could you...do you understand that or is there something of a (inaudible)?

Mr. Mejer: The current provider has, to my knowledge, at least 13 wreckers. I don't go out & inspect them. I'm not the sole owner of this contract. And I don't make sole recommendations. The Police Dept. is a part in this. The Police Dept., when it came time for renewal, we discussed whether to renew. We discussed all our options. We discussed all the pro's & con's of our options. And we ended up coming with the recommendation. I believe, from a legal standpoint, there is a...Capital & Independent Towing doing business as Phantom, Inc. So, I think there's some legal things in there that ties it that makes the wreckers theirs.

Mr. Camp: One other minor question I guess is another point brought up by one of the testifiers was that there was no insurance certificate on file. Would you elaborate on that?

Mr. Mejer: The gentleman did come to my office this afternoon, late this afternoon, & asked me for it. And I was rummaging around trying to find it & I didn't have it at that time. I do have a copy of the current certificate, 8/25/99 to 8/25/00.

Ms. Seng: I think we got a copy. It's hooked on to our other material that we got. On the addendum.

Mr. Mejer: That's what I explained to the individual too that possibly it was all in that packet.

Ms. McRoy: If we choose to keep the current contract for re-bid, that we can amend that because, on behalf of the North Bottoms Neighborhood, I know they're really upset with the tow trucks coming down their streets in that neighborhood. I've witnessed it myself. And, so, I would like to see, no matter who gets the contract, I really...doesn't matter, but we amend it so that they take an alternate route a hundred percent of the time & not go through residential areas when they can help it. So is that legal...from a legal standpoint, possible to do?

Mr. Roper: If we can mutually agree to the terms, we could do it.

Ms. McRoy: So, it's possible.

Mr. Roper: It's possible.

Ms. Seng: Vince, I wanted to ask what about that the lease expired in September? Is that right?

Mr. Mejer: Yes, that is correct. It expired in September. We had a new mayor. We had to make decisions with the new Mayor. We had the baseball situation come up. We didn't know where we were going to go. We didn't even know if we were going to entertain renewing the agreement because if, by chance, we couldn't find a suitable site, we were going to have to figure something else out. So, it took us that long to figure this something else out.

This matter was taken under advisement.

ESTABLISHING RESIDENTIAL & COMMERCIAL CLASSES OF GAS SERVICE & APPLICABLE RATES TO BE CHARGED BY PEOPLES NATURAL GAS FOR GAS SERVICE WITHIN THE CITY. (IN CONNECTION W/00-8);

REAFFIRMING THE PREVIOUSLY APPROVED TARIFFS APPLICABLE TO THE TRANSPORTATION OF NATURAL GAS THROUGH THE 12-INCH NATURAL GAS PIPELINE WHICH IS CONNECTED TO THE DISTRIBUTION SYSTEM SERVING THE CITY (LINCOLN LATERAL). (IN CONNECTION W/00-7) - Joel Pedersen, Assist. City Attorney: I was working on the rate ordinances you see before you tonight. They are a settlement agreement reached between Peoples Natural Gas & the City of Lincoln. The terms of that were an overall revenue increase of \$1.85 million which represented an overall increase of 4.4%. Alan Hersch from Peoples Natural Gas is here if you have specific questions on the agreement. The rate design was designed to increase the residential customer charge to \$8.25 per month & the remainder of the increase was split proportionately between the classes with commercial customer charge increasing to \$13.25 per month. The interim rates did go into effect in Oct. of '99. The difference between those, because they asked for more than we agreed to, that difference will be refunded with interest & people will see a credit on their bill for any difference for that.

Glen Cekal, 1420 C St.: Due to circumstances beyond my control, I had reasons to call the emergency repair service of the gas company just a couple days ago. And I got hold of somebody & the man reminded me that...he wanted to apprise me of the fact that there was a \$75 up-front charge. I did get just a tad disappointed & irate & I informed him that I really didn't want to discuss the matters with him any further & I called up my own service repair man. I do not...I am not privy to how

they are doing things other than to say that from what...observations I've made from a distance, I do not like the way the present gas company is operating as compared to the previous gas company. It seems like their public relations is not quite as good & I don't mean the gentleman that's here now because I think he's fantastic. But I also think that their form of billing stinks. I had somebody that has a...that's a tenant of mine & a good friend & a masters degree & looked at the bill & says what does this mean, I don't understand this at all. I said well, I don't either. So, I just bring this up. I wonder what there might be going on that...otherwise, that we don't know about. It kind of bothered me. I was thinking of somebody that was quite a...you know, really sort of hard up against it economically & they had a problem & they call up. Problems, you know, do...like that do seem to happen seems like I have a proclivity for this type of thing around Christmas & New Years or shortly thereafter. As a matter of fact, I don't know, it just happens. And so, I just thought I'd bring that up because I didn't know what else there might be. And I am concerned about people that are poor & I'm concerned about the fact that, especially if they're trying to really help themselves & have a chance at all. Anyhow, when you have a furnace blow up, for whatever reason, & it doesn't have to be because somebody's asleep or has...these things happen even to the best of circumstance. So, that's why I thought I'd bring it up & if you could kick it around & see if there was something more here to check into. Thanks.

Mr. Fortenberry: Mister Pedersen, translate the percentage increase into an average dollar figure on residential bills & commercial bills, if you can, but primarily residential.

Mr. Pedersen: The rate comparison for residential, the old customer charge was \$7.50 a month. The new one will be \$8.25. The delivery charge is bearing the brunt of the other increase & will go up from .106 per therm to .117 per therm. The estimated annual bill under the old rate was \$413, under the new one it will be \$431.

Ms. Seng: Paul, I'd just like to say that when I've had some calls come in regard to gas rates & the increase, the person from the gas company, Alan Hersch, has been very responsive & I've actually had some nice comments back from the people that you talked with. So, thank you.

This matter was taken under advisement.

ANNEXING APPROX. 318 ACRES OF PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-10, 00R-16, 00R-17, 00R-18, 00R-19, 00R-20);

CHANGE OF ZONE 3202 - APP. OF NEBCO, INC. FOR A CHANGE FROM AG AGRICULTURAL TO R-3 RESIDENTIAL, O-3 OFFICE PARK, & B-2 PLANNED NEIGHBORHOOD BUSINESS ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00R-16, 00R-17, 00R-18, 00R-19, 00R-20)

COMP. PLAN AMENDMENT 94-41 - AMENDING THE 1994 COMPREHENSIVE PLAN TO EXTEND THE FUTURE SERVICE LIMITS & TO CHANGE THE LAND USE PLAN, FUNCTIONAL CLASSIFICATIONS, FUTURE RD. NETWORK, & FUTURE WATER SYSTEM ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-17, 00R-18, 00R-19, 00R-20)

SPECIAL PERMIT 1808 - APP. OF NEBCO, INC. TO DEVELOP FALLBROOK COMMUNITY UNIT PLAN CONSISTING OF 314 DWELLING UNITS ON PROPERTY GENERALLY LOCATED NORTH



OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-16, 00R-18, 00R-19, 00R-20)

USE PERMIT 124 - APP. OF NEBCO, INC. TO DEVELOP 620,000 SQ. FT OF COMMERCIAL SPACE & APPROX. 50 DWELLING UNITS ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-16, 00R-17, 00R-19, 00R-20)

ACCEPTING & APPROVING THE PRE. PLAT OF FALLBROOK ADD. ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-16, 00R-17, 00R-18, 00R-20)

APPROVING AN ANNEXATION AGRMT. BETWEEN THE CITY & NEBCO, INC. WITH REGARD TO THE ANNEXATION OF APPROX. 318 ACRES OF LAND GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-16, 00R-17, 00R-18, 00R-19) - Kent Seacrest, Seacrest & Kalkowski, 1111 Lincoln Mall, Suite 350, representing NEBCO, Inc.: Also here today is Ross McCowan who is the Vice-President of NEBCO, Dan Muhleisen who's involved with the design development consultant, & Jack Lynch from Olsson Assocs. So, they're all here to answer your questions. We're very excited about this project. We're talking something that's very unique to Lincoln, Nebraska & NEBCO's had a track record for doing quality projects. But, once again, I think they're proving that that track record is well earned. For some of you that were on the Council previously, this...in 1998, we brought forward a comprehensive plan amendment to include this area as Lincoln's first urban village & now, tonight, you are seeing what we mean by that as long...with some new urbanism concepts. And, at this stage, we'd like to ask for some additional time because we have 7 different land use packages in front of you but we will be quick. And we'd ask Jack Lynch to take over.

Ms. Seng: Is that okay with everybody to have additional time? (Members indicated it was okay.)

Jack Lynch, Olsson Assocs., 1111 Lincoln Mall: Fallbrook is a mixed use development consisting of about 300 acres in the first phase. It will ultimately provide a total living, working, & recreating environment in the future. It consists of approx. 680 living units, about a half a million square feet of office, & about 120,000 sq. ft. of retail, grocery, banks, restaurants. It consists of about 5 different housing types. It has a more traditional single-family units. It has approx. 100 units of new urbanism that are detached single-family units served by an alley in the back, much like the old, traditional downtown of Lincoln. It also is served, again, by approx. a half a million square feet of office & 120,000 sq. ft. village center that consists of commercial on the first floors, on the 2nd & 3rd floors, office & some residential units, around a open area & recreation area, open space area. I think the back bone of the system is it's designed off of a transportation system that involves three very large parkways & roundabouts. Parkway are in right-of-ways that extend up to 200' wide. The roundabouts are 190' in diameter consisting of two north-south parkways & an east-west parkway. The main entrance to Fallbrook is off of Hwy. 34 approx. three-quarters of a mile west of the entrance to the Highlands, of the signal to the Highlands, & N. 1st Street. The parkways are also intended to carry all the overland drainage from the higher areas on the north side, down the parkways & into the retention/detention areas in the southern part of the property. Again, it's a mixed use development. The amount of retail component is basically

intended to serve just the residential community that Fallbrook is & another half million square feet of office. This is an image of the entrance off of Hwy. 34, coming into Fallbrook, across a bridge structure & into the Fallbrook development. This is an image sketch of anybody traveling on that bridge, coming off of Hwy. 34, into the development, looking west into the future office areas. This is a image of the village center, looking north, around a lake facility on the south side around the, again, retail area, office & residential components on the 2nd floor, the retailing is expected to contain a small grocery store, banks, restaurants & service areas such that children in that development & parents will feel free to travel by bike or sidewalk system/path system down to the village core. This is a typical residential component along the parkways. Parkways are designed with the residential either being fed off the alleys in the back or the traditional single-family lots are wider along the parkways to provide signage or garages so no garages will be seen from the parkways. And this, again, is an aerial view of the project, looking north. Again, the village core & the various residential neighborhoods.

Mr. Seacrest: We want to thank the abutting neighborhoods. We've had the opportunity to have over three formal meetings & many, many informal conversations with our neighbors & they did make the project better by allowing us to do some landscape & berms along N. 1st St. along with doing extra wide right-of-ways, mainly on our property & not on theirs. And, also, some extra large setbacks up against the neighborhood. We also agree not to put any apartments or retailing up against the acreages to our east as part of this project. Normally, our law firm stands in front of you saying we worked real hard with the neighbors & City Staff to work out our differences so we don't have to stand up here & talk about what you would deem esoteric comments or thoughts or conditions but, again, to our clients, are very important. But tonight we have two exceptions that we need to talk to you about that we need your guidance to help us do the proper mix between the public's interest & the private sector's interest. The first issue is there's a condition in the use permit that says we have to give a conservation easement for the 30 acres that is between Hwy. 34 & the village. And Dan's going to just outline that 30 acre parcel which is our front door area. What we want to do is instead of give a conservation easement, we want to give an open space easement. And there's some important differences we would like to go over with you. On the overhead I've given you...on the handout I've given you, what I call the conservation easement elements. There's basically three. You don't touch the terrain, meaning you don't grade, number one. Number two, you don't put any buildings. And, number three, you sometimes allow the public access over the private property just like it would be a park. Well, we'd like to ask instead of a conservation easement on this 30 acre parcel is what we call an open space easement where, basically, we allow & promise it to be in perpetuity, it'd be open space except for some permitted uses such as farming, open air & enclosed facilities for education & passive recreation like a golf course & related utilities, pedestrian & vehicular access. What we're saying, basically, is with this handful of exceptions, we would agree to the typical. We won't change the terrain. We won't put in buildings. And we would allow access for these permitted uses. The difference, simply, is as follows.

We have a very high end vision for North Lincoln here that you haven't seen before. And in order to make that vision come true, we might need to add a pitch & putt golf course to help be that extra amenity to attract an office or some user that we think is important, right now, in that 30 acres. So, if we had the City staff's way, we couldn't do that. We would be prohibited from doing anything to that 30 acres. So, a perpetual easement would block us from putting in a pitch & putt golf course which is one of the things we're still thinking about doing. On the flip side, if our high end vision isn't as successful as we want & we've got to go to a different mousetrap, perpetual means forever & we couldn't do anything. And, similarly, we might want to put in some other type of passive recreation in that 30 acres & we couldn't. And that can mean the difference between us having our second best land use pattern be successful or not. We also think that this is not what I call the pristine wilderness area that is worth saying you can't ever touch it because it's butted up against Hwy. 34 & we're going to surround it on the remaining three sides with office & retail. But we do agree with the open space thought. We're wanting it to be open space & we're willing to indicate that. We also do not see anywhere in the LMC or State Statute where the City can require this conservation easement, particularly, when we are giving all the park land that the Parks Dept. wants &, particularly, when we are doing more environmental enhancements & open space features than any other development I've ever stood in front of you with. Finally, the City's got other protections in addition called the 404 Permit Process so the wetlands are protected. And, secondly, this is zoned AG even after tonight's 7 potential votes, or next week's 7 votes. It's AG. We cannot put buildings in without coming back in front of you. And it's an outlot. And we couldn't come in & put a building in there without coming back again in front of you & asking to amend our preliminary plat (Pre. Plat). So, we're just asking for some limit of flexibility but we do agree with the open space concept but not a total prohibition of any use. That's issue number one. Issue number two has to do with these two streets. I'm going to call this the west leg of Alvo Rd., north being up, (inaudible) Hwy. 34, (inaudible). I'm going to talk about the west leg of Alvo Rd. I'm going to talk about NW 12th Street. Next, in the annexation agreement that we are processing in front of you, we, as Nebco, have agreed to do all the construction costs to rebuild an intersection on Hwy. 34 to allow the new entrance. We are agreeing to build a 5 lane roadway from Hwy. 34 north along N. 1st to get into the first entrance. We're agreeing that Nebco's cost to pay for two lanes of the rest of N. 1st up to Alvo Rd. We have also agreed in this annexation agreement to pay a percentage, twenty-seven forty-eighth's to be exact, of what I call the east leg of Alvo Rd., which is the boulevard that runs from N. 1st to the cul-de-sac that I'm going to ask Dan to point out to you. And the City is willing to pick up the share. Those roads we're not arguing about. What we're arguing about is the west leg of Alvo Rd. We are asking the City to give a good faith, best efforts to agree with us that we should continue to build the west leg like we are the east leg, including the funding package. In other words, we should build it as a parkway, attractive boulevard, with wide medians. The City has sought this east-west street arterial network up here called Alvo Rd., very important to the long term North Lincoln plan. We're not fighting it. We

agree. We're going to help pay for it even though our lots cannot, will not be able to front onto it because it's going to be a future arterial road. We just want the commitment that if we're going to start doing a pretty parkway on the east leg, let's finish it. Let's not abandon it. And all we're asking because that west leg probably will not be built for more than 4 yrs., legally we can't ask you to bind a future Council but we'd like you, as a present Council, to indicate to your future Council that you thought it was a good idea to keep it going, not legally, just best efforts that we should try to keep the west leg to match the east leg in both design & contributions. The second disagreement is on NW 12th St. & it's a dirt road today. Part of the problem we're having on all these roads is normally when you see developers come in abutting section roads, the County's already paved them. This development has three section roads that the County never paved. Other developers get free access to urban...or to that asphalt paving of rural standards. This developer has not had that opportunity & has been asked to pay, in my opinion, more than I've ever seen a developer pay for roads before. What we're asking on NW 12th, again, it's a dirt road, we'd give the extra wide right-of-way to make it an arterial, & we're willing to either build it at a rural standard or the City's two-lane urban standard. All we're asking for is whatever the City wants as their standard, we pay half. Not full, just half. Most developers don't pay anything because the County's already paved the road like this. We don't have that so we just want to be sure we only have to pay half. We're not asking unreasonable requests because we're talking a tremendous amount of cash flow, massive infrastructures on these 7 items in front of you today & we're just trying to get a little bit of cash flow planning in our plan. I gotta divert just for a second & talk about the inconsistency here because why the Staff's not supporting us is because those two legs are not in our Pre. Plat. What we're preliminarily platting in front of you today is the east part of the development that Dan is showing you. The west stuff, even though it's our property, is a subsequent phase & is not in front of you today. Another thing that you gotta point out is there's a little inconsistency here. While the staff says we're not showing those two legs of the roads inside our Pre. Plat., there's a water line & a booster pump I gotta talk to you about because there's an inconsistency here. In the annexation agreement, a lot of our area needs to be pressurized. We're too high up on the hill. So, we gotta do a booster pump. Our first position is the booster pump is the City's responsibility to provide pressure to fight fires. City staff said no. And we're not here today to revisit that one because we've got enough to revisit. We lost on that issue. Then the next thing is the City asked to oversize our booster pump so they could bring in more areas some day & pay the differential. But the City didn't have money for the subsidy for two years so they asked for an interest-free two-year loan. And, again, we're not fighting that. We're willing to do that. The City then asked that that booster pump, which we originally were showing in our Pre. Plat., be moved up on the hill right next to the City's water tower that's there. Notice we now are moving the booster pump outside our Pre. Plat. In order to put the booster pump where it was logical for the City, the City then wasn't planning on building that permanent booster pump for 8 year according to their plan. They asked for our assistance to build it right the first time out of the shoot which is going to save you hundreds

of thousands of dollars. Furthermore, when we decided to put the booster pump up by the water tower, we now have to build a mile & a half of water lines early. Again, we have to pay for our fair share of those costs ahead of the time. The moral of this story is we're asked to build, go out on a limb, spend more money early, loan the City money that they don't have without interest, & move the water system outside our Pre. Plat. Now we're asking for a similar commitment. If the City thinks they can make commitments for water outside our Pre. Plat., why can't the City make the same commitment for those two legs of roads inside our Pre. Plat. A side note, when we gotta build our water lines outside our Pre. Plat. to connect to the City's new booster pump that we're helping pay for, & loan the money for, normally, you gotta...the train is going like this so to build water lines, you'd generally put them in roads. In order to do this correctly, you gotta know where your road profiles are because if you don't & you bury the water lines like this & then you decide to regrade your site, either the water lines going to come out of the ground or it's going to be so deep that nobody could get to it. So, here we are having to grade a road network out there to get the City booster pump. Guess what segments of the road we are going to have to grade & master plan? The two segments of the road that we can't get the City to commit to, the west leg of Alvo Rd. & a section of NW 12th Street. Finally, this isn't something new, we have done two-phase annexation agreements before. We did at 27th & Pine Lake where we brought in the major four corners but then there was an area over by Lincoln Memorial & the Gerbig farm, as some of you remember. That was Phase 2. In the agreement, we master planned it. We agreed to what we were going to do & we had trigger dates as to when it would happen & how we would pay. Again, it was best efforts. So, we have had that precedent. Again, I'm sorry to take so much time but we really do ask your help on the open space easement rather than the can't do anything conservation easement, in this particular case, as well as trying to get the best efforts on those two legs of the road. And with that, we'd be glad to answer any questions you might have.

Ms. Seng: Kent, I don't know. This is really a sad tale here. Do you think we'll get through this?

Mr. Seacrest: We will.

Mr. Cook: Did you propose, I think I know the answer, but you did not propose the open space easement at the Planning Commission?

Mr. Seacrest: No, we asked for it to be totally eliminated because we thought the AG zoning & the outlot designation protected the City. We'd have to come back through the process to change that. Now we are proposing this compromise but to the best of my knowledge this staff has rejected our compromise.

Mr. Cook: The road network, right-of-ways, I'm just curious. On Alvo, we've got the medians & all. What kind of space are you setting aside on Alvo all through this development & do you know what the right-of-way is on Pennsylvania Ave. which has now become the focus of possible future improvement?

Mr. Seacrest: Yeah, we would speculate Pennsylvania 66'. Alvo Rd. we are proposing it to be 100' of right-of-way so we can get the road network in there along with the medians.

Mr. Cook: Okay. And N. 1st, of course, is 120 near Hwy. 34

Mr. Seacrest: Yes, we're...

Mr. Cook: But just 100 the rest...

Mr. Seacrest: It's about 115 on N. 1st to get all the turn movements in.

Mr. Cook: At the highway.

Mr. Seacrest: Well, and it goes up literally, I think, to the entrance of our development.

Mr. Cook: So, you will have more than a hundred that entire distance.

Mr. Seacrest: Yes, more than that entire distance because we're planning dual left-turn movements.

Mr. Cook: How wide is your median on Alvo?

Mr. Seacrest: Twenty feet.

Mr. Cook: Twenty feet. Okay, thank you.

Ms. Seng: Is that all?

Mr. Seacrest: Twenty-eight feet.

Mr. Cook: Twenty-eight feet. Okay.

Mr. Camp: Kent, couple questions on the second element that your discussing being the extension of Alvo & the paving of the county roads. What do you see as an expense projection or cost projection of that to the City if we were to go along or it's share that you're proposing?

Mr. Seacrest: I'd prefer asking the Public Works Director to come up with your numbers unless, Jack, you know what the City's numbers would be?

Mr. Camp: Assume if you're paying twenty-seven forty-eighths, ours would be twenty-one forty-eighths.

Mr. Seacrest: Right. And I'm just, again, I'm not...I don't know those numbers & I'm not sure Jack's brought that information. We could get that before your vote.

Mr. Camp: I think my concern is I'm not in disagreement with you. I think what you're proposing makes sense. What concerns me is if we're...is a timing element if we're going to have rob Peter in some other project to do this. Could you elaborate maybe on a time commitment that you're looking for or is it just a commitment that it will be done sometime.

Mr. Seacrest: We know it's over 4 yrs. out. We just want to know that and, again, we were willing to even, again, look at probably cash flow & loans if we had to if we caught the City in a bad year cycle but what we're trying to do is just know that you're going to pay it. Otherwise, why would we pay for an arterial boulevard more than we have to. The reason we want to do it is because of the continuity. It frames our development & we've got boulevards all over. But if you don't want to master plan your arterial network, that's fine. We can go to the minimum requirements which I don't think is what's in anybody's interest.

Mr. Camp: Would you mind perhaps getting that to us on the cost? I'd sure appreciate your best estimates.

Mr. Seacrest: We'll get that.

Ms. Seng: Does Roger have that?

Roger Figard, Public Works & Utilities: What was the question? The costs?

Ms. Seng: (Inaudible) only about Alvo or ...

Mr. Camp: Well, both Alvo & NW 1st. I guess just an idea, & perhaps you can't provide it tonight & I think the representatives of Nebco were willing to provide their estimates in the next few days. I'm just looking for some information & indication here what we would be committing the City to regardless of when.

Mr. Figard: The numbers I had in our negotiations on the west half of Alvo I believe it was a \$600,000 commitment somewhere between Year 5 & 10 & then we'd owe half of that.

Mr. Seacrest: Or slightly less than half.

Mr. Figard: That's a pretty rough estimate.

Ms. Seng: What about the other road then?

Mr. Seacrest: The other half we're not asking...you either find the money or you get your neighbor to the...our neighbor to the west to pay their other half. We think you can do that through other techniques like special assessments if you so choose.

Ms. Seng: Only the Alvo one?

Mr. Seacrest: I think Alvo, again, you could try to get the neighbor to the north but, again, that's probably us & we'd rather not have to pay all that ourselves because we are cooperating with you on an arterial network that isn't there today. The right-of-way's not even there. And we're willing to give the right-of-way free & that's got value that we haven't tried to put into the equation.

Ms. Seng: How much approximately is the water...the booster plant up there?

Mr. Seacrest: The booster pump's \$485,000 just for the booster pump & then the water lines are in addition.

Mr. Figard: I think the water mains total were, in Phase 1, were about \$312,000. City subsidy in the booster station was figured at \$192,000. City subsidy in the water mains in Phase 1 was \$121,000. Now, have those changed since our last negotiation? (Inaudible answer.)

Mr. Cook: Regarding Alvo Rd. again, give a 28' median & you have two sides of the road each which are two lanes, is that how it's going to be constructed initially? What will you have for sidewalks or pedestrian facilities or trees along the sides because you don't have much room left.

Mr. Lynch: There's 10' on either side of the curb & gutter. They're urban section. But in each case along our Pre. Plat., we create outlots along all those major roadways for our purpose of berming, buffering, landscaping, & trail systems. So, there's an additional 10' to 20' along N. 1st St., along Alvo. So, we're creating additional buffers.

Mr. Cook: So, like a trail or something might run off the road then.

Mr. Seacrest: In fact, I think we show the trail on N. 1st is on that outlot so we weren't even putting it on the City's right-of-way. We just didn't feel you're entitled to it but we're master planning it so someday there won't be homes & other things in your way.

Mr. Cook: Okay. One other question just reading the material here but... 'cause I'm struck by looking at these drawings. They're beautiful drawings. It's a wonderful looking development. And, of course, I look at this & I think wow, this would look awfully good in Antelope Valley

also. It's really nice. But I have a question because of that. The small grocery store that was mentioned. Just as far as coming up with an urban village & having a lot of small shops, you know, I keep hearing that you can't build anything less than a 400,000 sq. ft. grocery store today. What are the prospects for a small grocery store? Is that realistic? And why here as opposed to elsewhere.

Mr. Seacrest: Well, first of all, we have not been contacted by any grocery store so I don't want to create any rumors that one's coming. They're function of rooftops. What we have discovered in Antelope Valley is the market will support about a 40,000 sq. ft. grocery store. Now, today, the big one's you're seeing built are about 70,000. So, there is a mid-size that is making a come back apparently that is new. Now, the question is, you know, I don't think an urban village of this scale & this character wants to see a 70,000 to 80,000 sq. ft. grocery store. Will the 40,000 even work & what the impacts will be, you know, we just haven't scratched our heads hard enough to worry about that. If somebody comes forward, we will scratch our heads & worry about that with you. We'd love to see it because the area needs one.

Mr. Cook: Okay, well, thank you.

Mr. Fortenberry: You may end up with two 40,000 (inaudible).

Mr. Seacrest: He's talking about 14th & Superior?

Mr. Fortenberry: Can I go back to the road issue?

Ms. Seng: Yeah.

Mr. Fortenberry: Let me try to simplify what's at stake regarding Alvo Rd. You're asking the City to project into the future a basic commitment that this Council would like to see that roadway continued in the same type of high end design that you're willing to commit to (inaudible) first third of it. The City's willing to commit to that at some point using our typical design standards but you're asking for the added level of assurance that at least this Council agrees that that's a good direction for the future City Council to head in.

Mr. Seacrest: And knowing that you cannot bind that future City Council. Basically, for less than a two-lane street, you are getting a landscaped boulevard parkway. That's the offer. And if that doesn't sound like a good offer then let us know that now so that we don't have half of our development have it & then the other half have a whole different looking road network someday.

Ms. Seng: Are you going to provide us with some verbiage?

Mr. Seacrest: Well, here's...the verbiage is pretty simple. If you generally would like to...or if you're intrigued by our offer on the roads, we can bring, next week, two annexation agreements. One that has...& we've drafted the verbiage, it's just the City Attorney wants to be sure & review it because he didn't know if he had to review our verbiage on this two-legged road issue. But you can have a version in front of you next week with our verbiage & then the version that right now the administration wants which would be without that verbiage.

Ms. Seng: So, we'll have that next week?

Mr. Seacrest: Right. As far as the open space easement, that verbiage is in front of you.

Ms. Seng: We've got that.

Mr. Seacrest: Yes.

Ms. Seng: We're talking about Alvo Rd.



Mr. Seacrest: Right.

Ms. Seng: Sometime, we'll get that?

Mr. Seacrest: Right. Unless you know right now you're not interested then the staff doesn't have to review our verbiage.

Mr. Camp: I'm interested on that point but I do have a question on the pump station & all. Are you, & I guess I got a little confused on that Kent, is part of what you're asking is that the City would go ahead & pay for that booster station or what exactly are you asking?

Mr. Seacrest: We've cut a deal with the administration. We negotiated. We thought we were getting our two-legged road system in there & towards the end the Administration didn't think that was good planning. And we'd already agreed to all the water futures aspects & I mean, right now, we are not coming back & saying we want to pull the plug on all that water negotiation. We should but we're not. We're just telling you that it was ironic that we were willing to master plan a water system outside our Pre. Plat. but...when it was in the City's interest but I'm not sure why the road network isn't getting a similar willingness. You know sure we'd always like to have more details but I think we know enough.

Mr. Camp: So, you're paying for that.

Mr. Seacrest: Well, you're paying some but we're paying more. And but we're really doing is when we were putting that system in our own Pre. Plat., it was what we call an 8 yr. throw away because someday you were going to do the real system up by the water tank. So, you weren't getting much money...bang for your bucks. What we're now doing is taking our big capitol contribution, allowing you to go up to your booster pump & instead of making an 8 yr. throw away system, you're making a permanent system, booster pump system that will have a useful life of 25 yrs. or more. And it didn't cost you anything. In fact, we're loaning you your money that you don't have for the subsidy to oversize it to serve other areas besides yourselves.

Ms. Seng: I think that you should proceed with the Alvo Rd. piece. Like to see that material.

Mr. Seacrest: You would like to see the language on the two roads?

Ms. Seng: Yes.

Mr. Seacrest: Okay.

Ms. Seng: I believe there's enough of us that would.

Mr. Cook: One last thing. Regarding that road, a hundred feet may work in your environment there because of the extra space you have...

Mr. Seacrest: The outlot we're creating.

Mr. Cook: We won't necessarily have that in other areas along this road & so a hundred feet isn't really sufficient. I just wonder your comment on that because I know you've been opposed in other circumstances to larger right-of-ways should we be, as part of this process, requesting 120 or something?

Mr. Seacrest: Well, a couple things. First of all, you're community standard in your Comprehensive Plan is a hundred feet. So, you need to change it City-wide not just arbitrarily on one development. Number two, my opposition to wider right-of-ways was when the City proposed 140'. I proposed something like in the range of 120' at the intersections & as you go back from the intersections you can definitely live with a hundred feet unless you want to do some other unique features.

But that application was in front of you or was headed your way but it was pulled at Planning Commission.

Mr. Cook: That'll be part of the Comp. Plan discussion.

Mr. Seacrest: Okay, is that what it is?

Mr. Cook: Yeah.

Mr. Seacrest: I agree with you...

Mr. Cook: It's hard to live with even a hundred feet here. A hundred & twenty between intersections I think would be a minimal thing if we have to put in the trees & the sidewalks & the (inaudible).

Mr. Seacrest: I agree with you. At intersections, you need more than a hundred feet if you're going to have a long term, lots of lanes of traffic.

Mr. Cook: I think we're 20' off all the way around. But that's okay. We'll talk about that. Thank you.

Ms. Seng: Is that everything from you, your side?

Mr. Figard: Question Coleen. What exactly did you ask Kent to do? What's...you're interested in what as it relates to the roads?

Ms. Seng: He asked us for our feelings, if he should bring something forward.

Mr. Seacrest: What is being proposed, Roger, is to use the best efforts language on Alvo Rd. beyond...in that 5 to 10 yr. period. That that formula & that land use design. And then on NW 12th, it would be a developer pays half of whatever you want. Urban section or rural section.

Mr. Figard: Okay. This is a difficult situation. I guess I need to say a couple things. The developer's worked very hard with us at master planning what's the right thing to do for the water system & it is true that we are doing something larger. I think now, as I look back in, we're also reimbursing the developer for some of that additional booster station in '01/'02 as an additional subsidy. So, I'm too sure other than they are front ending some money which we appreciate very much, I don't think we ever backed up on you because from Day One, in every one of the agreements negotiation meetings, we talked about whether or not it was appropriate to add the language for those future roads that are outside of the plat. So, if you feel we backed up, I'm sorry. I don't think we did. And I think you've worked hard with us to help the water system get a system that will serve us on into the future & is a good use of the money. The roads issue, I don't think we disagree that the boulevard concept in the future ought to be done. But really all you do...we don't have a plat, we don't have any layout, we don't have any land use, it hasn't been master planned. The only thing that agreement does is it caps the developers future contribution but it doesn't guarantee you where the road will be & what the land use will be. And while I agree that that Alvo Rd. to the west should be a boulevard type, I think that if that's what it is to the east when the next plat comes in, we'll do the same thing. I'm less uncomfortable with that piece. However, I still haven't seen a plat in the land use as I am with NW 12th. Kent's exactly right about there isn't a paved county road out there today. That's another evidence development is out pacing our ability to do infrastructure. And I don't...I'm uncomfortable in suggesting that the developer's contribution on the edge ought to be half the cost of a rural section. I'm not sure as fast as we're growing that that is a good use of our infrastructure dollars. And that it may ought to be something else &, as well, we're

getting ready to go into a mode of what is fair share. Every agreement we argue, we negotiate, we spend months trying to figure out is it half, is it twenty-one forty-eighths, what is it. I'm uncomfortable with what NW 12th is going to be in the future & I just felt, along with Planning, that that should be left out. I appreciate the offer but it doesn't tell us the land use, the location. All it does is caps the developers future cost contribution, not what's going to be built. And that's why we felt uncomfortable in having that in there. Planning...

Ms. Seng: I thought we were talking about Alvo Rd.?

Mr. Figard: Well, Alvo & NW 12th, they're both the same piece. Or they're the same kind of animal. There's two different pieces.

Mr. Seacrest: Just a couple comments. First of all, you could call it a cap, you could also call it a floor. Everybody familiar with S. 40th from Old Cheney to Pine Lake Rd.? That's one of those fact patterns where the development got there before the County paved it. What happened? Well, every developer was able to do residential development which is the land use we're proposing, we promise we're not going to have commercial up there or else we'll open up the whole negotiations. So, what the developers were able to do was plat every lot but the lot that abuts S. 40th. They didn't put a dime into the deal. And what's the City now doing? Paying a hundred percent. So, our commitment to pay for half is what I call an up-front approach. We could do what every developer did on S. 40th & not plat up to the street & allow you to do it all. So, you can call it a cap but I'd like to call it a floor. We're paying our half which we think we should do because...& to say we should pay for more when the guys across the street gets a free lunch, I don't know, that just bothers me.

Ms. Seng: What did we do on Pine Lake?

Mr. Figard: Which portion of Pine Lake?

Ms. Seng: The portion that was nothingness before we hardsurfaced it.

Mr. Figard: Between 14th & 27th?

Ms. Seng: No, 27th east.

Mr. Figard: Twenty-seventh east. We negotiated a good pair...a good portion of that & the developers paid a good portion of what went in down there & I don't remember the exact formulas on all that.

Ms. Seng: Did it to lower standard to begin with, right?

Mr. Figard: I see what you're saying. Initially, when that whole area was annexed in, there was an agreement in which the developers put up \$150,000, the County put up \$150,000, & the City put up \$150,000. And I would tell you that we wasted all \$450,000 because the asphalt was barely used before we started taking it out. And I think that's part of my concern up on NW 12th is that we don't go put something in. I think it needs some more looking in my opinion.

Ms. Seng: Can you keep negotiating in a week?

Mr. Seacrest: Right. On that example, the private sector ended up paying one-third of a rural section road. Our offer is if he wants a two-lane urban section, we'll pay for half. Two-lane urban section's twice a rural road. So, we're paying so much more than anybody paid down at Pine Lake Rd. on our offer in front of you that I'd love to have a Pine Lake Rd. agreement.

Mr. Fortenberry: Why is the issue of NW 12th important at this

point?

Mr. Seacrest: We just want to know that the City isn't going to ask us to pay more than half of that road be it urban, which is the expensive version, or the rural section, which is less.

Mr. Figard: So, as the community moves forward & works on fringe, if the community says the developer should pay more, in this case, if you've already committed, you've capped the cost to half rather than some new formula and...

Ms. Seng: Or three-fourths.

Mr. Figard: Or whatever, sure.

Mr. Seacrest: And, right now, most developers haven't paid a dime because the County's paid for them & the one's that have it paid way, way, way less than one-half.

Mr. Figard: And sometimes that's a penalty of getting out in front of where the roads are there. If you want to come early, you need to perhaps pay more. I wish I had an unlimited pot to be out there & do that. I can't. And it's...I think our issue in the negotiation is there aren't resources to ante up with the developer here & try to do that so I think we need to wait until that plat & that area comes in.

Mr. Camp: Kent, did you say that your clients also own the section to the west, the other side?

Mr. Seacrest: I didn't mean that. I meant we do own some land to the north of this west leg of Alvo but we do not own anything west of NW 12th. That's another property owner. That's why that property owner should pay half.

Mr. Camp: Although if it is more than just a county road, then that property owner would be forced into paying more than that type of construction.

Mr. Seacrest: If you choose to do more than a county road. In my opinion, a county road's going to last a long time & until & unless you decide to build an overpass into the Highlands. It isn't going to go anywhere without that overpass. Thank you.

Clerk: Anyone else wish to come forward to address the 7 pieces of legislation involving Fallbrook Add.? Either for or against?

Glen Cekal, 1420 "C" St.: It's a pretty big subject to tie into. What goes through the mind, a couple quick things, how Mr. Enersen picked out the park land. I'm thinking in terms of the fact that Highlands North was the front runner for this project. This project wouldn't be going in now if it wasn't for Highlands North which is a kind of a close to my heart property. I haven't...let me see, where am I at here? The park land next to the road, we're talking about conservation & one thing & another, why don't they just give the land to the City? Just like the park land that we had, you know, just to the south of this going in town. Why don't they just give it to the City unless they want to take away something that we don't want to later on give to them? Why don't they just give it to the City? Secondly, something that's been bothering me, I suppose everybody else knows about this but I haven't heard any talk about what they're doing with Hwy. 34. How do you get from this property to Highlands North for example? If you wanted to. And I heard...I couldn't, you know, if you folks would turn up this sound system back here so the rest of us could hear, I don't think my hearing's that much poorer. But very humbly, I please request...I've said it to several people & it

still hasn't been done. And about the next time I have to say this, I'm not going to be nice about it because I think it's a little bit rude. And when people come down here to listen, then I think they should be able to hear especially if they have reasonably normal hearing. Anyhow, I would think you should just...that land I think should be just given to the City as park land, this 34 acres or whatever it was. I haven't heard about the road system, 34 between these two tracts. I don't know if there's underpasses, overpasses, turn-off lanes, what have you. But, to me, you know, we've messed up our entrances so bad & I don't...& maybe this has all been taken care of but I haven't heard about it here today for the time being.

Mr. Cook: Not a question for you but it is a good question & I thought I would ask Mr. Figard to just briefly answer regarding Hwy. 34 because this will include another stoplight at the new entrance off Hwy. 34 & we have a stoplight at Fletcher now. Do we have any plans, any thoughts that at some point Hwy. 34 would become a limited access highway like we're going to do with Hwy. 77 on the west?

Mr. Figard: There has been a lot of discussions with the Nebraska Dept. of Roads exactly what needs to be done with Hwy. 34, what needs to be done on Hwy. 2. I think, at this point, the consensus is that Hwy. 34 would remain an expressway with at grade intersections allowed on half mile intervals. We spent a lot of time working with the Dept. of Roads locating this proposed intersection into the Fallbrook Add. & just recognizing it will have a traffic signal. There is, at the present time, negotiations going on. Council recently passed an interlocal in which the County & the City & the State are looking at the State's improvement of Hwy. 34 out past Hwy. 79. There'll be some additional looking at the connections from the residential areas & that future arterial network system up north what it ought to be & how it should interact with Hwy. 34. At this point in time, the City & the State would say that we probably wouldn't recommend or suggest we can afford to build interchanges on Hwy. 34 on out & on Hwy. 2 as it would leave the City limits & go out towards a future beltway. Expressways with half mile access points at grade, signalized at the time that they would meet warrants & be needed.

Mr. Cook: And, so, there really is not going to be any land set aside in case some time in the future we do change those plans 50 yrs. from...we'll just have to figure out what to do at that time, is that basically where we're at?

Mr. Figard: That's correct.

Mr. Cekal: You know a person who fails to plan, plans to fail. I don't care how much money we have or don't have. The City, County & State should be planning...I haven't thought this through but I assumed we'd hook in with NW 48. Is there a possibility we would hook in with NW 12th & go south to the U.P. Industrial Park? And then one quick thing, you know when you're having a development & especially if you're just a very average person you talk about all kinds of crazy things. I remember once upon a time, talking about the intersection of 1st & Fletcher, which was the northeast corner of Highlands North, & how there would be underpasses & how you could get off & on & into this area & how we'd have a four-lane divided highway around it & all that safety, excuse me for interrupting, I was just trying to give you a quick view...

Ms. Seng: Glen, can you get to the point for us?

Mr. Cekal: I've got to it. The point is if we don't plan...if we don't know...if we don't plan ahead, we're going to fail surely. We've been screwing up on the N. 27th entrance. Everybody knows it. We can do much better. Thanks to Larry Enersen, he's not here to help us. And I suppose if I was in Mr. Figard's spot & all these tons of projects, I would, you know, have bad dreams at night. How are we going to do all this, too much work, where are we going to find the money, but we've got to have this highway system on 34 figured out. Thank you.

Mr. Figard: I think we are planning & I think that by making an expressway with at grades that means the rest of the transportation Planning has to take that into account. And as far as the question about NW 12th & it's access to 34, at the time the Highlands was annexed & bought by the City, commitments were made to the neighbors in that area that NW 12th, when constructed, would serve as an access point on to the north & into the County, not as an access point from 34 off into the residential area. I think the Comp. Plan speaks to that & we are simply trying to preserve that interpretation & that commitment that was made so it would be a passover, not a connection to 34.

Danny Walker, 427 E St.: I think I'd appreciate it if the City Council before you bend over backwards & cater to Nebco & this Alvo Rd. project & super expressways & etc., etc., let's take a look at some of the streets in the older neighborhoods. I'm putting together some responses to a couple of letters & one of them is to Mr. Figard in regards to the City's core. Do you realize over a 5 yr. period, there wasn't one City core street touched? Keep that in mind. That's rather important. I appreciate Mr. Seacrest's address & what they're doing. However, you have to face one simple fact. The more money that's dumped into projects like this that diverts from money that could be sent into the core where it would do some good.

Terry Kubicek, 1800 S. 53rd St.: As a matter of philosophy in terms of urban expansion, we know that there are significant hidden costs in urban sprawl. It, therefore, seems appropriate that Mr. Figard is concerned about his budget & how much infrastructure costs are going to be contributed by the City to the development. Would like to also point out that it seems appropriate that in that consideration, we also give due consideration for the inner City, our established neighborhoods, so that there is a balance in the City's growth that is in keeping with the Comprehensive Plan. I would also urge a word of caution in terms of this development. As I recollect, it's drainage is into Lynn Creek. If so, & being on the north side of Hwy. 34, whatever structure will retain the two, ten & hundred year frequency storm will have to be a high hazard structure. And I would ask that the City Council & City-County Planning note that to make sure that it, in fact, meets that safety standard for community safety. I would also point out that the City of Lincoln has not extended its hundred year floodplain north of Judson which is the I-80 park to the west side of, I think, I-180 as it goes north. So, therefore, we don't necessarily know the limits of the hundred year frequency flood in that area. And I would point out it is of some concern to the neighborhood because Engine Company 14 is along Lynn Creek & if there was a high hazard flood, a hundred year flood, & there was a breach or an

overtopping of a retention structure, Engine Company 14 might not be able to move. There is also a school in that area to the north. And, again, the Lynn Creek has not been delineated. That school may be currently in harms way & given this development, & potential future development north of Hwy. 34 that would drain into Lynn Creek, that hazard may, in fact, increase. Those are words of caution & ask that those cautions be conveyed to City-County Planning & be considered in your deliberations. I'd be happy to answer any questions. Thank you.

This matter was taken under advisement.

COMP. PLAN AMENDMENT 94-43 - AMENDING THE LINCOLN LAND USE PLAN TO CHANGE THE LAND USE FROM "PARKS & OPEN SPACE" & "WETLANDS & WATER BODIES" TO "PUBLIC & SEMI-PUBLIC" ON PROPERTY GENERALLY LOCATED WEST OF SUN VALLEY BLVD. & SOUTH OF CHARLESTON ST. IN THE VICINITY OF N. 1ST ST. - Vince Mejer, City-County Purchasing Agent: Also, I guess caretaker of the impound lot. I believe you all have received the information packet. What I'm going to explain to you today & I brought other people to discuss various facets of this particular project, we investigated approx. 22 different sites for an impound lot. We had criteria that the location had to be within two to three miles of Downtown because that's where most of our tows were at. We preferred to have City-owned land. Therefore, we didn't have to expend the cost of that. We wanted to stay away from wetlands issues if at all possible. Of the 22 sites that we looked at, all but 5 were in the floodplain. I guess it's kind of hard to be out of the floodplain & be Downtown. I believe Steve Hubka discussed with you that we have done some work at the site. Nothing that cannot be retracted. We spent a little money preparing the site for some projects. We have not entered into major contracts. I have roughly 7 contracts that I'll be putting forth, if you approve it, within the next week, to sign so that we can move forward on it. With that, I'd like to turn it over to Jim Peschong of the Police Dept. to discuss the rationale of an impound lot & then Jim will turn it over to the architect for the project, & then the architect, Sinclair-Hille, will turn it over to Olssons to discuss the environmental issues.

Jim Peschong, Assistant Chief w/LPD: And I'm just going to talk with you real briefly about the Police Dept.'s concern on the City tow lot. I have this little map here. It's just really going to show a snapshot in time. The Police Dept. tows approx. 4,000 cars a year. The dots on this represent over the summer of 1999, I took a thousand tows & kind of plotted them to show you that the majority of our business is in the Downtown area. So, it's important for us, for our customer service & for an operational cost to try to have an impound lot as close to the Downtown area as possible. Years ago, we did...when there was some changes in the impound lot we did have an impound lot for a short period of time out on N. 77 out there by the Interstate which generated an awful lot of citizens complaints & concerns that they kind of felt that not only were they having to pay a large tow fee but then they also wound up trying to find a ride or a taxi ride on out to the impound lot as well. So, we would like to wind up, if it's all possible, to have have us...the impound lot in the Downtown area. Also, if the impound lot is not in the Downtown area from an operational point of view, officers would be at traffic accidents or trying to get a vehicle towed a lot longer for snow

emergencies & things like that which winds up having an officer out of service for a longer period of time as well as public service officers. So, our issues really boil down to operational costs & customer satisfaction. If anybody has any questions, I'll try to answer those.

John Sinclair, Sinclair Hille & Assocs., 105 N. 8th St., Suite 100: Going to take you very quickly through the tow lot building. Maybe some background while we're waiting for this to come on the screen, the proposed tow lot site is actually a two phased project. The larger phase of it anticipates having about 581 cars in the tow lot facility itself. About 528 that would be relative to general storage & then 53...capacity for 53 for the auction facility. The second phase of the development actually scales it back. There's the anticipated realignment of Sun Valley Blvd. along here. When that goes through, the tow lot will move from this line back to this area & then that inclusion will give us the capability of about 355 cars. The actual construction of the tow lot building itself is envisioned to happen on the north side of the site, northwest corner, we will be moving the existing facility that's a 40' by 80' building. For those of you that haven't had the pleasure of going to the tow lot facility, this is the building. We'll be taking it apart & reassembling it on the site on a new foundation, new pad. The facility itself will be surrounded by a wooden privacy fence that will have perimeter security with that also. The cars within the lot will all be tied down to guardrail facilities relative to the floodplain issues. The lot itself will be surfaced with gravel. And the general construction profile, be done this way. Because of the floodplain, we would build a pad about 5' high (inaudible) over the existing landfill, reconstruct a slab & footing foundation at that point & then reconstruct the building on top of that. Pretty straightforward process. Yes, Jerry.

Mr. Shoecraft: Who will own the building?

Mr. Sinclair: I believe the building will be owned by the City.

Mr. Cook: When Sun Valley is realigned, what will you see when you drive down Sun Valley past this lot? Will there be some screening? What's been planned in that regard?

Mr. Sinclair: I might let Vince answer that one because I'm not that familiar with how Sun Valley's going to be...

Mr. Cook: Second question, what's the right-of-way we're planning to set aside there for Sun Valley?

Mr. Sinclair: I don't know the right-of-way.

Mr. Mejer: For the screening issue is it will have a wood dog-eared type fence 6' high with barb wire on it.

Mr. Sinclair: I'm going to turn it over to Olsson Assocs. They're going to address just some of the environmental & general site issues.

Dr. Jeff Johnson, Olsson Assocs., 1111 Lincoln Mall: We've been involved with the wetlands & other environmental issues with this site. The first portion of my presentation will be on wetlands that were identified or have been mapped in the northern portion of that triangle. Those were mapped by the regulatory agencies in the late '80's & early '90's. We performed jurisdictional wetland delineations on the property. We identified no wetlands based off of that & the concerns that they had been mapped previously. We asked the regulatory agencies which include the U.S. Corp. of Army Engineers, Nebraska Game & Parks Commission, U.S. Fish & Wildlife, & the Dept. of Environmental Quality to go out to the



site & confirm our findings. The agencies did go out to the site with us & we looked at the site. We looked at the areas that had been mapped. They concurred with our findings & the Corp., who is the agency that presides over wetlands, issued a letter after that saying they agreed with our findings that there are no wetlands on the property. There are some weedy vegetation or weedy wetland vegetation that had been identified out on the property. We attribute that to the snow that had been stored on the property in the last several years as well as the salt that's been in with the snow. That allows for the saline conditions which promoted the original mapping. So, the bottom line on the wetlands & the agencies have agreed there are no wetlands on the two lot property. The other issue is the landfill issue. We have been meeting with the Dept. of Environmental Quality on the landfill. They are the regulatory agency that oversees that end of it. They are very agreeable to working with us on this project & keeping the project moving. Essentially all they've asked for is make sure that we keep them in regards to what's going on with the property as well as following the regulations. The landfill cap is an issue. They don't want it disturbed or if it is disturbed, replaced. As well as if there's any trenching into the refuse of the landfill or any disturbance of the landfill, it's replaced & that the cap is at least maintained or if not improved with the project & all those steps are being seen through this project. I'll answer questions.

John Olsson, Olsson Assocs., 1111 Lincoln Mall: Architects with this project. I'm going to talk to you about the avoidance, the minimization & the mitigation. First, the avoidance. I think Vince & Jim Peschong talked about that earlier as to why this site needs to be where it's at. It's a fact it is in the floodplain but there's reasons why we need to be in this general area. Secondly is minimization. As Jeff had mentioned, the Dept. of Environmental Quality has stated that we cannot remove the cap that is there so it's not possible for us to go in there & dig out a bunch of dirt to put this tow lot down into the ground. We've gotta preserve the existing landfill cap that's in place. We've done some things in our design to minimize the impact on the floodplain. John talked about some of the components of the building. We're only bringing in enough fill to get this building up out of the floodplain. In addition, we're using some engineering fabrics underneath our gravel, geotextile, to minimize how much gravel we need to bring in in the parking lot. That reduces the amount of fill we need to bring in. And then, finally, the mitigation. We are in the Salt Creek valley, along the Salt Creek branch & in many areas of Salt Creek, you're allowed to fill in the floodplain unlimited. But, in this particular reach between W. "O" St. & I-180, there's a limit, according to the flood insurance study, of 15% fill. So, in other words, if you're in the floodplain, this study says you may fill up to 15 percent. The City of Lincoln standard does not say that but this federal insurance study does go to say that. Our proposal is to comply with what the federal guidelines have indicated, that is the 15 percent. Do we meet current City requirements? Yes. Do we exceed current City requirements? Yes. Do we meet the intent of the flood insurance study? Yes. Are we meeting no net loss of storage? No. I won't kid you about that. We can't provide that. We can't dig a hole at this particular site. Are we meeting no net rise? Well, we're not doing that either because we can't...we're not able to dig a hole at this

location. So, with that, I'd be glad to answer any questions you might have.

Mr. Cook: This might be more for the administration. How many different sites were looked at before this site?

Mr. Mejer: Twenty-two.

Mr. Cook: You made quite an effort.

Ms. McRoy: Mister Olson, a question for you, you're last statement you said you're not meeting the no net rise but if it was another project that wanted to build in this site, we wouldn't let them.

Mr. Olson: Well, I don't know that that's necessarily true. I don't know that you're...in the current City statute allows for fill in the floodplain & I don't know that there's any regulations in place on a no net rise. Now, perhaps they're being under consideration at this point in time.

Ms. McRoy: I thought there was so, okay.

Ms. Seng: I want to follow up with a question that was asked earlier, probably with Vince or else with Dana, who assumes the liability if...that question was asked earlier, in regard to the cars?

Mr. Mejer: The towing contractor has liability insurance & the City is named additionally insured. But we all know that beings we have the deep pockets, they will...people will try to come after us. As far as the floodplain issue & the cars floating away & all that type of thing, according to the code, we have two options. One is to tie the vehicles down. Two is to move them. We are choosing to tie the vehicles down.

Ann Harrell, Mayor's Aide: I'm here on behalf of the partners along with Kent Seacrest.

Kent Seacrest, Seacrest & Kalkowski, 1111 Lincoln Mall, Suite 350: We have been working hard in this public, public, private partnership trying to do the baseball project with UNL, Nebco, & the City of Lincoln. And one of the very first things we had to do was figure out the critical path in order to get what we call baseball in the Spring of 2001 to Lincoln. Working backwards, the tow lot relocation is one of the most critical point of the critical path & it is probably the first major pre-construction activity that is necessary. Despite that, obviously, the tow lot should be viewed on its own merits & we do think that there are public reasons & public benefits to relocate the tow lot in this case besides the baseball & the softball & all that. And that is basically the tow lot today is seen from I-180. Now, it might be seen a little bit from I-180 in the future but it's much, much, much further away from the main City entrance to our community of I-180 & we think that's important. We also think that the tow lot is a good floodplain management tool in that it utilizes floodplain area but does not suck up the capacity to store flood water while other land uses that the City or other people could look at for that site would take away flood storage ability. And, finally, we think that recycling an old landfill is always a wise use of public resources because it's very valuable piece of real estate & any time you can put a use that is compatible with an old landfill, I think the City's far ahead. And with that, we're the end of the presentation. We'd be glad to answer questions or have other people help.

Clerk: Anyone else wish to come forward in favor of Item 12, of this Comp. Plan? If not, I'd entertain anyone that's in opposition to come forward.

Danny Walker, 427 E St.: I pulled a map that's dated 1/14/2000. It's the area that you're looking at. I'm sorry, I think lack of color is going to kill it but you will find I don't know who's right & who's wrong, but I know where this map came from. Now, Olsson Assocs. & etc. says there's no wetlands in that area. That's not what this map says. The map definitely says there is wetlands in that area. Period, no if's, and's or but's about it. If you want to look at the copy of this map afterwards, that's fine. Secondly, I don't really appreciate the pre-Council action taken on the storage lot. I don't think that's fair to the general public. There's people out there working. There was contractors out there putting in fill, elevating the building site for the building on 12/27/99. Isn't it strange? 12/24/99, there was bidding...in the paper Notice for Bids with the bids expiring Jan. 7, 2000. Aren't we getting the horse a little bit in front of the cart here? I mean, you know, we don't have Mark McGuire or anybody coming in to play on this baseball park. You know, I don't think it's a matter of life or death what time frame is utilized. And, as far as I can see, I have pictures of what has went on out there since this little pre-Council agreement with the City of Lincoln. There wasn't that much time gained. So, you know, I don't know what stunt anyone's trying to pull, if these people were afraid of public opposition, why they took those steps or what. But that's not fair. We'll move on to the tie downs. Tie downs were mentioned again tonight. To the City Council, Lincoln, Nebraska, Jan. 18, 2000, referring to statements made by City Staff, the Mayor's Roundtable Meeting on the date of 1/13/2000, regarding storage of impounded vehicles, operable & inoperable in a designated floodplain on property generally located west of Sun Valley Blvd. & south of Charleston St., in the vicinity of N. 1st St. It was stated by Staff during the aforementioned Roundtable meeting that in the event of a flood, tie downs would be utilized to secure a towed, stored, and/or abandoned vehicles which amounts to 300 to 500 vehicles. Therefore, I request the following: 1) a copy of the tie down designs with approval shown by the Dept. of Building & Safety & the City of Lincoln Health Dept.; 2) the agency or department that did the testing of these tie downs selected by the City or the County; 3) a copy of the Army Corp. of Engineers reports in regards to utilization of floodplain areas for vehicular storage; 4) a copy of the Army Corp. of Engineers recommendations for types & allowable uses of tie downs in a floodplain; 5) a copy of the Engineering report and/or studies dealing with the force which will be exerted on these tie downs in the event of flooding. In addition, I would like clarification concerning a similar situation near the proposed storage lot. There's an outfit called Sark Commercial Storage located to the south of the proposed site who's business purpose is to store vehicles in a fenced, outdoor area. I have observed there are no tie downs or other restraining devices used to secure these vehicles in the event of flooding. Further, there's not been a public hearing dealing with the Sark's storage lot. This lot is in a designated wetland area & within the floodplain of Salt Creek. I'm requesting that any or all answers to this letter be made in writing within 30 days to me at the following address & I give my address & I have a copy for each one of you. Now, I'll show you the Sark situation. The top photo that I'm pointing to is the Sark storage facilities. No tie downs, nothing. This is directly adjacent to the overpass & it is behind the proposed storage location.

Now, what's the City going to do here? Are they going to let these people slide or are they going to force them to use the same accommodations as they have to use in this storage lot? I think that's a very good question & it should be answered. There are other vehicles stored closer to the overpass that I could not get a picture of because of access. If you'll look at the bottom picture with the two vehicles covered, this is very disconcerting to me & displeasing because I'll tell you why. One of those two vehicles was involved in a double fire fatality in my neighborhood on SW 1st Street. Now, here this vehicle is moved out to another area, no one know anything about it, there's no plates on either one of those vehicles but that's very disheartening to see that vehicle shuffled around like that. And, like I say, it was involved in the fatality of those two individuals. Next question, who owns that storage lot that those two vehicles are sitting adjacent to? There's a semi-truck trailer sitting in there in storage. What are we going to do there? Are we going to run tie downs or what are we going to do? I think the City dug up this can of worms, well, the City can answer some of the questions & the City can be liable for some of it. I think that's only fair to me. As far as I'm concerned, when stuff like this takes place, they're jeopardizing my well being if it's not done properly & I don't think this is being done properly.

Richard Halvorsen, 6311 Inverness Rd.: I guess, number one, I'd dispute the assertion that the current lot is an eyesore coming in to the City. I've traveled that road many a time & never noticed the lot was there. I don't know, maybe I was too busy reading the billboards or something but I just never noticed it. But the second question I have is the tie downs & who they're suppose to benefit? If you tie the vehicles down & they get flooded, they're ruined anyway. And, plus, the water goes over them, the pollutants, the antifreeze, the oil & the gasoline, is going to be washed out of them anyway. I'm sure the car bodies are going to stay there but I would think those would be relatively easy to (inaudible) up so I would think even if you have tie downs, you still have a great potential for polluting the environment & plus ruining the automobiles. So, I can't see the advantage of tie downs other than the fact cars themselves will be easier to (inaudible) up but they're still going to be ruined. The pollutants are still going to be in the groundwater. Thank you.

Mike Morosin, 2055 "S" St., Past President of Malone Neighborhood Assoc.: I've been a mechanic for 40 yrs. & I know how the pollutants very easily get into the groundwater source. We have a problem if many of you watched with some of the oxygenates that are being added to the fuel & we have NTBE, which is one of the big one's, & we may get some vehicles in that are towed in that have that type of gasoline in there, in their car, & it can easily get in & it's very water soluble. So, tying these vehicles down does present a problem in the pollution end of it. You would be much better off to get those out. We have oils, many of those

cars that are towed in sometimes have problems with oil leakage, transmission leakage. So, I think we should take a look at that & be very careful that we put that because the contamination of that groundwater can very easily happen. Thank you.

Terry Hinkle, L & L Towing, 3029 N. 48th St.: We presented to the Mayor & to the Dept. of Finance, a proposal to build the City impound lot several months ago at no cost to the taxpayer's to maintain it, to give the City of Lincoln a contract on the property to be used as a City impound lot for 25 yrs. at a minimum. Which would help also in controlling the rent, the cost of operating a tow business. George Brockley, the owner of LTR, & Randy, one of the other owners, is here tonight also, asked me to put this together to propose the property. We were told because at 80th & Fletcher St. it was too far out. Understandable? Yeah. We have a majority of the businesses done right in the downtown area. Response time is a consideration for the Police Dept. but from what I'm hearing here tonight, there's a lot of controversy over this. There's a lot of talk around town about this being right down there, being right next to the BMX track, to the lake & everything & it's such a beautiful little neighborhood over there. And, not to mention during this baseball season, what kind of traffic are we going to be looking at in & around the ballfield for getting in & out of towing & speed & getting out of the impound lot. Right now, on football Saturday's, it's a bear. You gotta go clear out to "O" St. sometimes & when the one-way traffic stops you gotta get all the trucks out of the impound lot & get them down into the downtown area. With what we were proposing to the City, with the impound lot out there & LTR already does the Sheriff's contract, you could have the Sheriff's contract, the Police contract, we would build a building big enough to house 10 to 15 cars inside, 4 private investigations, all the bicycles & everything that would be involved & just keep it strictly as law enforcement. And that would also provide security, provide the maximum security we could build. But it would be a beautiful site but it's something that we don't feel got very far down the line. We think it went to the Mayor, & I know that everybody's probably looked at it but I don't think it got to this far, to the Council. But it is a proposal that we could do & George Brockley has no problem financing the venture. And, in that situation, if there was a flood, or if there was the hundred year flood that we've all talked about for years, it hasn't happened yet, any damage or any responsibility or liability would solely be held to the property owner that this is housed on. There would be no liability come back on the City. There would be a proper insurance. We would have to purchase all that, of course, & get the numbers on that. But that is an option if the City chose to look at it. And if they wanted to do that, they could contact George Brockley on that as an alternative for this if it's not voted on to do it in this area. Thank you.

Sheryl Burbach, President of the North Bottoms Neighborhood Assoc., 917 Claremont(?): I'm also a member of the Foul Ball Committee. The Foul Ball Committee is a group of citizens of Lincoln that got together to oppose baseball going in at the 6th & Charleston St. site. And I have a prepared speech. We oppose moving the tow lot for two reasons. The first being that Oak Lake Park is a very poor choice for a tow lot. The second reason we oppose this action is that it paves the way for the larger

baseball project at 6th & Charleston Streets. First things first, the proposed site for the relocated tow lot is a very poor one. It will be located across the street from Oak Lake, northwest Lincoln's major park. Would you put a 500 car tow lot next to Pioneers Park or Holmes Lake? No, of course not. This will be a blight on the landscape. It will also be located adjacent to a realigned Sun Valley Blvd. with only cheap, green slats to hide it from the traffic or park visitors. They looked at 22 other sites & none better than this one? That's insane. The real reason they chose this site is because it's relatively cheap. The City already owns it. That is it. Otherwise, it's a loser. Don't you want to know if there are better sites out there? Or do you want to just take the chance & pick this one because the baseball project is on a tight schedule? Please take some time & do this thing right. This is a decision that we'll have to live with forever. We know at least one of the 22 rejected sites. It was in an industrial area near I-180 & Cornhusker Highway. It satisfies the close to Downtown requirement. So, what's wrong with it? They thought it might detract from an entryway to Lincoln. It's already an industrial area, just plant some trees along the highway to screen it. In addition, we oppose this move because it paves the way for an even larger & more costlier mistake, the baseball project at 6th & Charleston Streets. Thank you.

Terry Kubicek, 1800 S. 53rd St.: I'd like to appear & express concerns about a statement made about the Corp. of Engineers standard for 15% encroachment on a floodplain. I believe that is not a standard. It was referenced in the 1978 Flood Study of Salt Creek & it was speculation on the Corp.'s part that there could be infringement on the floodplain &, at that time, it would not cause serious additional flooding or damage or migration of water in the event of a hundred year flood. It is not a standard. It is speculation. The City of Lincoln by indicating that it will do tie downs recognizes that this facility will probably flood. And in order to meet the requirements of its own model statute enacted so that the City of Lincoln could participate in the National Flood Insurance Program. If a facility is located in a floodplain or floodway & would be subject to flooding, i.e., it's commercial or industrial, in the event of flooding, it must not have items that would otherwise float away. So, the tie downs are there to prevent cars from floating away but they will flood & they will be damaged & there would be risk, insurance risk, to the City. I mean, conceivably, on a football weekend, if you towed two or three Mercedes, a Jaguar, three or four Cadillacs, you could easily have a half million dollars worth of cars right there. And if you had up to 500 cars in the tow lot at any given time, that's a significant liability in terms of insurance if they would be damaged in a flood. I would submit to you that this location which continues a bad trend on the part of the City, locate an infrastructure in floodplains, ought to be relocated. The baseball stadiums in a floodplain. The Lincoln Waste Treatment System is in the floodway. Lincoln Electric System is on the floodplain. We've noted significant cost to flood proof those facilities, here's an opportunity to easily relocate a facility, take it out of harms way, reduce liability of the City & build a first rate public/private partnership that was enunciated tonight. It would seem that that kind of partnership deserves more study & consideration. I'd be happy to answer any questions. Thank you.

Don Burbach, 3600 Hartley Cir.: I just can't find it in my small pea brain that 22 sites were looked at & they were all no good & this was the only good site in the middle of a floodplain. I, too, have a problem with my car being tied down if it were towed. I would hope it'd never be towed but I do have a problem with it being tied down. I'd just as soon it floated out of there & got to some dry ground. I heard the complaint the other night at the meeting we had...the neighborhood had with the Mayor's folks & the comment was made that people complained because they had to go too far to get to the tow lot to pick up their car. Why should any of us care about that? If you park your car illegally or you do something wrong with your vehicle & it's towed, why should this Council waste their time worrying about whether some guy has to take a taxi out to 56th & Hwy. 2 or whatever it might be to get his car? That shouldn't be our problem. We don't need to park them close to the Downtown area just to save somebody a taxi fare. That's his problem. My daughter happens to live clear on the south end of town & the tow lot is clear up here on the north end of town. If she got towed, she'd have to find a way to get her car. So, I really don't think that's a valid excuse. Leave the tow lot right where it is & forget the ball diamond.

Ms. Seng: Paul, I think...Vince, could you come up? I think Jerry's got a question.

Mr. Shoecraft: Just a simple, quick question. The assembly of the building at the proposed new site, you said it will be City owned?

Mr. Mejer: Yes.

Mr. Shoecraft: Will Phantom, Inc. be...if that renewal process is granted, will they be leasing that building?

Mr. Mejer: They'll be leasing the building & the land from the City as the impound facility.

Mr. Shoecraft: And that's part of that legislation proposed?

Mr. Mejer: Yes.

Mr. Shoecraft: Okay, thank you.

Ms. McRoy: The 22 other sites that were evaluated I assume there's a report that has the addresses & the reasons why they didn't work out?

Mr. Mejer: Yes, we have that.

Ms. McRoy: Can we have those before the next meeting because I have to really weigh this? I am really torn about this situation & I'm going to have to look at, you know, know why the other 22 sites were rejected. So, is that public? Can we get that?

Mr. Mejer: A lot of the reasons they were rejected was floodplain issues, Saline wetland issues, some of the sites that were originally proposed to us, for example, was the old Police firing range. Well, that has EPA problems in it as well as Saline wetlands. And then the other factors is to how we get there. The entryway to the City, the I-180 site that the young lady proposed to us was looked at as one of the viable options. However, it is a direct corridor, would be an eyesore. I mean right now you have semi-trailers parked there. That is not as bad as an impound lot with wrecked vehicles.

Ms. McRoy: I know but I guess, you know, echoing what Mr. Burbach said, I guess my little pea brain needs to know this for myself & read it why they were rejected & so, I guess...'cause it is next to a very nice lake. It's next to a place that's very dear to my heart, the BMX Track, & we all know that. So, I mean there's a lot of reasons not to put it

here. I mean we're not putting, you know, unsightly things in other parts of town. He does have a good point. Oak Lake's a very beautiful place. You know, we're not putting, you know, things that we don't want in other areas so I guess for my sake, I want to know exactly why the other 22 lots, I mean, & there could be very good reasons, Saline, this is the floodplain. But I guess for the answer to my constituents, I want to know exactly why we said no to 21 other sites.

Mr. Mejer: I will get you that list.

Ms. McRoy: Thank you, I appreciate it.

Mr. Mejer: There are two misconceptions that I'd like to clear up if I could. One is the tie downs basically is, in a flood situation, is to keep the vehicles from moving & blocking the water creating a dam effect. And then the other issue is about tax dollars. There are no tax dollars that are used in this. The way the impound lot & the tow contract is is the people that get towed, they're fines pay for it. We don't use any tax dollars.

This matter was taken under advisement.

SPECIAL PERMIT 1512D - APP. OF LINCOLN NORTH CREEK, L.L.C. TO AMEND THE AUTUMN RIDGE WEST C.U.P. TO INCREASE THE TOTAL NUMBER OF DWELLING UNITS FROM 297 TO 300 & TO ALLOW PATIOS & DECKS TO EXTEND OVER THE BUILDING ENVELOPES FOR THE SPECIFIC ATTACHED SINGLE FAMILY DWELLINGS ON PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF N. 21ST ST. SOUTH OF THE OLD FLETCHER ALIGNMENT - Mark Hunzeker, 530 S. 13th St., Suite B, representing applicant: We have one item that we would like to ask you to remove from the conditions of approval of this community unit plan (C.U.P.). And that is Item 3.3 on page 6 of your fact sheet. That item requires the paving of Folkways Blvd. & N. 21st St. to the south or another access to the north of this area having been completed prior to issuance of any building permits in this subdivision. I'm going to try to keep this as short as I can but it has some history. Last April, the C.U.P. was approved for this developer. The condition that was imposed on that C.U.P. was that the final plats would not be scheduled on the Planning Commission Agenda until either an executive order had been requested or a paving district had been requested for the purpose of paving the S. 21st St. connection between our plat & Folkways Boulevard. Now, if you look at page 12 of your fact sheet, you can see, basically, the area that we are amending. We are adding three dwelling units. We're going from 297 dwelling units to 300. And we are changing a handful of single-family lots to townhouse lots. The only other change involved in this entire C.U.P. is that we are asking that decks & patios be allowed to extend outside the building envelopes as they are in most townhouse developments. We are not changing any streets. And there are a number of these townhouses that you see on page 12 already under construction. In fact, virtually all of those townhouses are sold. If you look back to pages 11 & 12, you can get...or excuse me, 10 & 11, you can get into a little better perspective what this condition requires. The two north-south streets & I should just take this so I can point to it...the two north-south streets, this is 23rd St., this is 21st St., if you look on the page opposite, you see 21st St. extends on to the south. That right-of-way exists but it is unpaved. This also extends on over to Folkways. That right-of-way is dedicated right-of-way but it is outside the boundaries of our plat. We do not control that area that runs south



of the south line of our plat. Which is why the Planning Commission & you, when you approved this Pre. Plat., said that if a request for an Executive Order or a request for a district to make that connection was in place, we could get our final plats. We have final plats on all these lots. We have a number of them under construction & just this week, in fact, just today, we made a connection up to the north end of this plat on 21st St. & the only thing we're lacking in terms of getting another way out of this area, is a connection north of here over to 27th St. at Fletcher. That piece will be constructed as soon as it's possible to do so. I would say spring but the way we're going right now, maybe it'll be next month, I don't know. We paved streets in this subdivision last Wednesday. We paved streets today. It's a very unusual winter. But, in any case, we want the street. The Planning Dept. wants the street. The Public Works Dept. wants the street. Nobody disputes the need for the street. But we have...& there is an Executive Order request in place & in process. We just can't make it go any faster & we have people who are in the process of building homes who probably won't be able to occupy them until spring when we'll be able to pave Fletcher & have the second way out of here. But, in the event they do complete them, we want the people who've bought those townhomes to be able to get in & occupy them. The amount of traffic that will be coming down 23rd St. which turns into Sea Mountain Rd. is still really not very much traffic. It'll amount to, you know, less than a big collector street. And so the few people who are living here, may have some degree of inconvenience for a very short time but we will be, in fact, again, there is an Executive Order pending & in process for this stretch of S. 21st & over to Folkways & we will be building the connection across at Fletcher just as soon as it's possible. So, we'd ask that you take that condition out & let us proceed with this amendment so that we can allow people who've bought these lots & are building their townhouses to be able to construct the decks that they want. And, if you have any questions, I'll try to answer them.

Ms. Johnson: So, Mark, what you're basically saying had you not come in & wanted to change the decks or add the three, this would not have been a stipulation so...

Mr. Hunzeker: That's correct.

Ms. Johnson: Making a minor change, we've changed the whole scenario of the project.

Mr. Hunzeker: Yes. And if, you know, Rick & I have talked about this. Rick Houck is the planner on this & I think his feeling about this is maybe not terribly strong although I know he's had some complaints. If we're unable to have that condition eliminated, we will probably just not accept this amendment to the C.U.P. because three more units is a nothing. I mean it's just not worth it. To not be able to get more building permits in these final platted areas. So, from our perspective, we don't think we're changing enough to justify this big a change in the rules that apply to this subdivision & we'd just ask that you take...[break in tape]...

Mr. Cook: ...requirement initially under 1.1.4 & they changed it to 3.3 to do you a favor but that's...

Mr. Hunzeker: I understand that & I...that's partly my fault because I wasn't there that day & I had passed this off to my partner who did not know as much of the history of it & I don't think the Planning

Commission quite understood the nature of the change that was being made. But, it is what it is. I mean, it's a significant change of the rules, you know, not just in the middle of the game but near the end of the game.

Rick Houck, Planning Dept.: I really don't think this is a significant change to the rules. This rule has always been in place. This requirement has always been in place, since 1995, when the original Autumn Ridge development was put in. The original C.U.P. dictated that the western portion of this development not be final platted as buildable lots until Folkways Blvd. & 21st St. was extended & improved. The City, shortly after that time, went ahead through the condemnation proceedings to acquire 21st St. & Folkways Blvd. to connect the western part of this development down south & east. There's been a lot of neighborhood opposition. I have had many calls from homeowners along Sea Mountain Rd. about the increase in traffic. I don't think Public Works has done a traffic count up there. I don't think it's approaching anywhere near a threshold level for a collector street. I think even when it would be fully developed, it wouldn't be approaching a threshold level for a collector street. However, you've got an older community up there, primarily elderly folks & they are concerned about the traffic there. The single-family dwellers often cross the street, admittedly illegal, to go into the apartment complex or the condominium complex on the west side of Sea Mountain to visit friends, to have dinner, or whatever. As I talked to Mr. Hunzeker before the meeting, or during the meeting, I won't strenuously oppose deleting this condition but I just feel it is something that has been agreed to in the past, consistently agreed to in the past, & it should be...it should remain in effect right now.

Mr. Fortenberry: Perhaps either one of you can answer, just review what the original agreement was.

Mr. Hunzeker: I think Rick's correct that in 1995, there was a condition that said you have to pave that road before you get a final plat. When this developer acquired this Autumn Ridge land & came in with the new C.U.P. in 1999, in April, we said look, you have the right-of-way, City, you have the right to order it constructed if you wish. We don't control it nor do we control the developer to the south. But we talked to the developer to the south & it's Home Real Estate & it's Ridge Development...Southview & Ridge, excuse me, & they said yes, we will cooperate & they have. They have submitted a request. We asked for the condition to be changed in April of '99 so that it would read that we could get final plats upon the request for an E.O. or a request for a district for that connection to be made. The request for the E.O. is in process as we speak & that's set out in the report as well. So, we feel like we have complied with the condition of approval as it applied to our Pre. Plat & C.U.P. We understand, you know, going back further, there was once upon a time a condition that it had to be done before any final plats could be done but that condition no longer applies to this & we have final plats & have sold lots & people are under construction. So, we think it no longer applies to this plat & shouldn't be applied again.

Mr. Camp: I'm just wondering...I appreciate the testimony of both parties & on the City's position. It sounds like this is just going to be moot point in a matter of a very short period of time & so I'd guess in deference to other (inaudible) I'd like to see us move on with our

testimony tonight on other matters.

Mr. Houck: Mark & I have discussed it. It is likely that a street system to the north even & construction of Fletcher out to 27th will be completed by this summer. We really...I don't think it's really a long range problem.

Mr. Hunzeker: The reason I have some confidence of that is the same developer who is developing this C.U.P. is also developing North Creek which is the development immediately to the north & we've been working with Public Works on getting Fletcher extended from 27th St. west for some time & as far as I know, the plan is to get that done immediately as soon as the weather permits.

Mr. Cook: So, if this will be a moot point soon, what's the reason for us to have this concern & to put in some condition regarding this? Is there some fear that it might not come out as planned or can the plan change?

Mr. Houck: There is always the fear that might not be constructed.

Mr. Cook: Is there any alternative wording that could be inserted that would address your concerns in that regard other than this that would basically say if it happens within this period of time, we don't need to hold things up but if not...

Mr. Houck: This is less restrictive than the condition we originally placed on the development. If anything, it's more restrictive to the developer. With the condition that we first placed, there'd be no final...no additional final plats completed or approved until the road is completed. They could still sell the lots. They can still get the occupancy permits on the lots that are final platted today.

Mr. Camp: Madame Chair, I'd like to move that we delete Section 3.3 from this resolution, please.

Mr. Fortenberry: Second.

Ms. Seng: More discussion on that? Paul, would you call...

Mr. Cook: So, Mark, the Planning Commission didn't do you a favor in that you could go ahead, sell your lots, let people build on them, with the original condition 1.1.4. You just couldn't come in with an additional final plat & what are your...

Mr. Hunzeker: Actually, I don't...we have final plats on all this ground. The only thing that would be a new final plat would be a replatting of some existing single-families into townhouse lots. We have final plats on most of it. So, it's...in terms of its practical affect, it hasn't much because we simply won't accept it & we'll continue to build. What it has...the practical affect it will have is to place a hardship on those people who have purchased lots, who need the change in the patio language in order to do what they intended to do & so you impose...you know, you don't really harm the developers ability to continue to sell lots, you harms the people who've bought them already.

Mr. Cook: I just have one legal question then regarding acceptance. If we were to pass something, a change to a C.U.P. that the developer rejected, doesn't our passage of it make it the new C.U.P.?

Mr. Hunzeker: No, we have to accept...we have to file an unconditional letter of acceptance of all the conditions of approval of the C.U.P. before it takes effect. So, if you impose conditions which we can't live with, we will simply not accept it.

Mr. Cook: And then you just live with what has existed.

Motion carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

This matter was taken under advisement.

SPECIAL PERMIT 1816 - APPEAL OF DR. DONALD L. JORGENSEN TO THE PLANNING COMMISSION APPROVAL FOR THE EXCAVATION OF SOIL ON PROPERTY GENERALLY LOCATED SOUTH & EAST OF THE CORNER OF NW 40TH & W. VINE STS. - Clerk: There is a request from Dr. Jorgensen that public hearing be continued on this until next week, Monday.

Mark Hunzeker, 530 S. 13th St., Suite B: Appearing on behalf of Chadd Construction, the applicant for this mining permit. I know you have a request on your agenda to defer the public hearing. If you intend to do that I guess we'll just...we can stop but I would really urge you not to do that. This item was on the consent agenda in front of the Planning Commission. It was approved unanimously. This is a location where there are no homes within any nearby area. It is immediately adjacent to a site which Mr. Chadd has excavated previously & he has absolutely no problems with any of the conditions of approval that were proposed by the Planning Staff. I simply urge that...I mean this is...if you haven't looked at your fact sheet, this is an area that is literally under the runway & the flight path. It is not suitable for residential development. To suggest otherwise is kind of kidding oneself. In fact, the noise contours would probably prohibit it for at least a quarter of a mile or so away from the runway. And so, we would ask that you approve this special permit today rather than deferring a public hearing for another day to hear from a...

Ms. Seng: Will this cause you a hardship if we hold over the public hearing for another week?

Mr. Hunzeker: Well, Mr. Chadd has at least two contracts for dirt that he could've been working on now for over a month. He got approved, I think it was the end of Nov. or early Dec. & found out on the 14th day after that it had been appealed &, of course, there were about two or three meetings in there that we didn't have so, it's gone on for a month now that he's been unable to utilize it & the weather has been perfect for fulfilling those contracts. So, it will cause some hardship to delay it.

Mr. Cook: It was on the consent agenda. It was removed I guess just for discussion amongst Council...

Mr. Hunzeker: Mister Chadd did not understand what the consent agenda did for him.

Ms. Seng: What's the Council's feeling on this? Do you want to go ahead?

Mr. Cook: Make me uncomfortable someone files an appeal & they're unable to be here that we would go on without at least hearing what they have to say. So, I would oppose rushing forward. I think one more week is not too big a hardship in that regard. Just in case it isn't held over & we don't speak again, I do think Cecil Steward's concern about this entryway corridor is a good one to at least consider carefully in the future because a soil mining operation is not the most attractive thing to have along a major entryway to the City.

Mr. Hunzeker: He did vote for it however.

Mr. Cook: He did, yes.

This matter was taken under advisement.

AMENDING THE CITY'S RESOLUTION ON LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES TO CLARIFY LANGUAGE; TO PROVIDE FOR TRAVEL APPROVAL BY DEPARTMENT DIRECTORS & INSTITUTING A REQUIREMENT FOR DIRECTORS TO SUBMIT A SEMI-ANNUAL REPORT REGARDING TRAVEL AUTHORIZATIONS; TO PROVIDE THAT TEAMS ARE ELIGIBLE FOR THE MAYOR'S AWARD OF EXCELLENCE; & TO ELIMINATE REFERENCES TO THE CITY'S WELLNESS PROGRAM - Ms. Seng: Paul, we have a substitute.

Clerk: Yeah, do you want to do that at this time, we can?

Ms. Seng: Shouldn't we put that...

Clerk: Yeah, we can put it on, right.

Ms. Seng: Is there a motion?

Clerk: We do have, & I do have it signed here, we do have a substitute resolution introduced by Shoecraft.

Mr. Shoecraft: So moved.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

Tom Casady, Lincoln Police Chief: I'm here to testify on behalf of the administration & the City Department Directors about the provision in this resolution that changes the way approval for travel by City employees is handled. In the past, travel has required the approval of the Mayor & the City Dept. heads have found that this process can sometimes be cumbersome, paperwork has to flow back & forth between those two offices, there are literally hundreds of trips taken by City employees in the normal course of business every year. Department heads basically feel that we're perfectly capable of distinguishing the necessary travel from the unnecessary travel & making that approval at their department level given the fact that we have live within the budgets that have been allocated for that. The Mayor is comfortable with this. The travel of Directors themselves would continue to require the approval of the Mayor. But for the smaller travel done by our employees, that approval would come only by the Department Directors subject to a semi-annual report that we would submit to the Mayor's office recapping the travel. Frankly, given the volume of small travel expenses that we incur, I think this might even result in better oversight since the Mayor will be looking at an overview of approx. 6 months worth of travel by department rather than each individual \$25 expenditure for a tank of gas for a police officer to go to Grand Island for example. That's something that we've all discussed together. I think all the directors are on board with this. I believe this would be a good change & one of those rare occasions where we might be able to speed up business & reduce paperwork.

Clerk: Anyone else wish to come forward in regard to this resolution? Also, too, just a reminder, we do have a request that this particular piece of legislation be placed on Pending.

Ms. Johnson: Do you want us to make a motion now?

Clerk: Yes.

Ms. Johnson: So move.

Seconded by Cook & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

This matter was taken under advisement.

SPECIAL PERMIT 1123A - APP. OF PEOPLE'S CITY MISSION TO EXPAND THE EXISTING FACILITY & TO REDUCE THE FRONT YARD SETBACK ALONG "R" ST. ON PROPERTY GENERALLY LOCATED IN THE BLOCK SURROUNDED BY "R", "Q", N. 1ST & N. 2ND

STS. - Ron Bonczynski, Executive Director of People's City Mission: We have requested permission through the Planning Committee for expansion. We recently met with the Planning Committee, met all the criteria the was presented to us in order to proceed with this expansion. I have our architect with us, Michael Bott. And we'd be willing to address any questions.

Ms. Seng: I don't think we have any.

Mr. Bonczynski: On behalf of the 3,000 people we'll house this year, thank you.

Danny Walker, 427 E St.: I was just reminded by accomplice sitting next to me the question is that City Mission is in the floodplain, are they going to utilize tie downs there also? Thank you.

This matter was taken under advisement.

USE PERMIT 99A - APPEAL BY WHACO CORP. OF THE PLANNING COMMISSION APPROVAL TO CONVERT THE APPROVED 110,850 SQ. FT. OF RETAIL/COMMERCIAL & RESTAURANT SPACE INTO 120,000 SQ. FT. OF RETAIL SPACE FOR A DISCOUNT STORE ON PROPERTY LOCATED ON THE NORTHWEST CORNER OF 27TH ST. & PINE LAKE RD. - Tim Claire, 1201 Lincoln Mall, Suite 102, representing Whaco Corp.: We are the party that filed the appeal & this afternoon we filed a withdrawal of that appeal. The parties have reached resolution on satisfactory terms. And we would ask if we could vote on that approval of the appeal now as opposed to waiting till the end.

Mr. Cook: So moved.

Ms. Seng: Because you want to leave.

Mr. Claire: 'Cause I want to go home.

Mr. Shoecraft: Suspend the rules?

Clerk: I would say this first, why don't we do this, is to grant the request to withdraw the appeal & then we'll vote on the Use Permit 99A as is. How's that sound? We'll get the formal appeal off first.

Ms. Seng: I think we already had a motion & a second as far as withdrawal.

Mr. Cook: I have a question. Paul, why would we vote on the Use Permit at all given that it wouldn't be here if it weren't for this appeal? Doesn't the appeal nullify this & there's no vote?

Clerk: That should be...that is correct.

Mr. Cook: Okay.

Clerk: So, let's just withdraw that.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

This matter was taken under advisement.

APPROVING A 3-YR. CONTRACT WITH THE LINCOLN EMPLOYEES ASSISTANCE PROGRAM TO PROVIDE ASSESSMENT & REFERRAL TO EMPLOYEES & FAMILY MEMBERS FOR PERSONAL PROBLEMS WHICH MAY AFFECT JOB PERFORMANCE - Georgia Glass, Personnel Director, came forward to answer questions.

This matter was taken under advisement.

**\*\* 11:10 p.m. - Council took break.**

**11:15 p.m. - Council Reconvened. \*\***

### MISCELLANEOUS BUSINESS

Danny Walker, 427 E St., came forward regarding at the last Planning Commission Meeting, the Chair was very degrading to the North Bottoms Neighborhood; don't think you have to take cheap shots & try to make a neighborhood look bad before the viewing public.

This matter was taken under advisement.

### ORDINANCES - 3RD READING

CHANGE OF ZONE 3218 - APP. OF THE PLANNING DIRECTOR TO AMEND THE ZONING ORDINANCE OF THE LMC TO ADD CHAPTER 27.68 RELATING TO PROVISIONS FOR "PERSONAL WIRELESS FACILITIES" TO PROVIDE A PURPOSE, DEFINITIONS, TO PROVIDE FOR PERMITS, PERMITS TERMS, RENEWAL APPLICATIONS, RENEWAL DETERMINATIONS, CONDITIONS FOR RENEWAL, LOCATION PREFERENCES, APPLICATION REQUIREMENTS, STANDARDS FOR EVALUATION, DESIGN CRITERIA, GENERAL REQUIREMENTS, ABANDONMENT OF FACILITIES, & TO ALLOW PERSONAL WIRELESS SERVICES FACILITIES IN ANY ZONING DISTRICT. (IN CONNECTION W/00-4) - PRIOR to reading:

CAMP Moved to amend Bill 00-3 in the following manner: On page 16, line 19, delete the word "under" & insert in lieu thereof the word "of" & after the word "feet" insert the phrase "or less" (see attached Amendment #1).

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CAMP Moved to amend Bill 00-3 (see Amendment #2). Seconded by Johnson.

CAMP Withdrew his motion. Seconded by Johnson.

CAMP Moved to amend Bill 00-3 (see Amendment #3).

Seconded by Johnson & **LOST** by the following vote: AYES: Camp, Johnson, Shoecraft; NAYS:: Cook, Fortenberry, McRoy, Seng.

CAMP Moved to amend Bill 00-3 (see Amendment #4).

Seconded by Johnson & **LOST** by the following vote: AYES: Camp, Johnson, Shoecraft; NAYS:: Cook, Fortenberry, McRoy, Seng.

FORTENBERRY Moved to amend Bill 00-3 to require that the Planning Dept. & Law Dept. review the ordinance in one year's time, do an evaluation & impact study on the industry.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng; NAYS: Shoecraft.

CLERK Read an ordinance, introduce by Annette McRoy, amending Title 27 of the LMC by adding a new Sec. 27.68.010 to provide a purpose; adding a new Sec. 27.68.020 to provide definitions; adding a new Sec. 27.68.030 to provide for permits; adding a new Sec. 27.68.040 to provide for a permit term; adding a new Sec. 27.68.050 to provide for renewal applications; adding a new Sec. 27.68.060 to provide for renewal determinations; adding a new Sec. 27.68.070 to provide for conditions for renewal; adding a new Sec. 27.68.080 to provide for location preferences; adding a new Sec. 27.68.090 to provide application requirements; adding a new Sec. 27.68.100 to provide standards for evaluation; adding a new Sec. 27.68.110 to provide for design criteria; adding a new Sec. 27.68.120 to provide for general requirements; adding a new Sec. 27.68.130 to provide for abandonment of facilities; adding a new Sec. 27.68.140 to allow personal wireless services facilities in any zoning districts; adding a new Sec. 27.63.720 to allow personal wireless services facilities in any zoning district, the third time.

MCROY Moved to pass the ordinance as amended.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17588**, is recorded in Ordinance Book 24, Page

CHANGE OF ZONE 3219 - APP. OF THE PLANNING DIRECTOR TO AMEND SECTIONS 27.03.110 & 27.63.150 OF THE LMC RELATING TO THE DEFINITION OF "BROADCAST TOWER" & THE GUIDELINES FOR REVIEW OF A SPECIAL PERMIT FOR A "BROADCAST TOWER". (IN CONNECTION W/00-3) - CLERK read an ordinance, introduced by Annette McRoy, amending Title 27 of the LMC, the Zoning Code, by amending Sec. 27.03.110 to amend the definition of "broadcast tower" to provide that personal wireless service facilities not exceeding 50' in height shall not be considered broadcast towers; by amending Sec. 27.63.150 to provide that broadcast towers allowed by special permit shall be reviewed under the guidelines established in Chapter 27.68, Personal Wireless Facilities; repealing Sec. 27.03.110 & 27.63.150 of the LMC as hitherto existing; & declaring an emergency, the third time.

MCROY Moved to pass the ordinance as amended.

Seconded by Cook & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17589**, is recorded in Ordinance Book 24, Page

#### **SPECIAL PERMITS, USE PERMITS & PRELIMINARY PLATS**

SPECIAL PERMIT 1512D - APP. OF LINCOLN NORTH CREEK, L.L.C. TO AMEND THE AUTUMN RIDGE WEST C.U.P. TO INCREASE THE TOTAL NUMBER OF DWELLING UNITS FROM 297 TO 300 & TO ALLOW PATIOS & DECKS TO EXTEND OVER THE BUILDING ENVELOPES FOR THE SPECIFIC ATTACHED SINGLE FAMILY DWELLINGS ON PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF N. 21ST ST. SOUTH OF THE OLD FLETCHER ALIGNMENT - PRIOR to reading:

CAMP Moved to amend Bill 00R-2 by deleting Condition 3.3 of the Fact Sheet.

Seconded by Fortenberry & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79956 WHEREAS, Lincoln North Creek, L.L.C. has submitted an application designated as Special Permit 1512D for authority to amend Autumn Ridge West C.U.P. to increase the total number of dwelling units from 297 to 300, to revise the dwelling unit allotment from 137 single family dwelling, 60 attached single family dwellings (duplexes & triplexes), & 100 multi family dwelling units to 130 single family dwellings, 70 attached single family dwellings (duplexes & triplexes), & 100 multi family dwelling units, & to allow patios & decks to extend over the building envelopes for the specific attached single family dwellings on property located on the east side of N. 21st St., south of the old Fletcher alignment, & legally described to wit:

All Lots & Blocks within the final plats of Autumn Ridge, Autumn Ridge 1st, Autumn Ridge 2nd, Autumn Ridge 4th, & Autumn Ridge West Additions located in the NE¼ of Sec. 1, T10N, R6E of the 6th P.M., Lincoln, Lancaster County, Nebraska;



WHEREAS, the real property adjacent to the area included within the site plan for this amended community unit plan will not be adversely affected; &

WHEREAS, said site plan together with the terms & conditions hereinafter set forth are consistent with the intent & purpose of Title 27 of the LMC to promote the public health, safety, & general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the App. of Lincoln North Creek, L.L.C., hereinafter referred to as "Permittee", to amend Autumn Ridge West C.U.P. to increase the total number of dwelling units from 297 to 300, to revise the dwelling unit allotment, & to allow patios & decks to extend over the building envelopes for the specific attached single family dwellings, on the property legally described above, be & the same is hereby granted under the provisions of Sec. 27.63.320 & Chapter 27.65 of the LMC upon condition that construction & operation of said community unit plan be in strict compliance with said application, the site plan, & the following additional express terms, conditions, & requirements:

1. This permit approves 100 multi-family units, 130 single family units, & 70 attached single family units for a total of 300 dwelling units & allows patios & decks to project outside the building envelopes for those lots identified on the Autumn Ridge West C.U.P. as Lots 12 through 51, Block 3.

2. Before receiving building permits:

- a. The Permittee must submit a revised & reproducible final plan as approved including five copies.
- b. The construction plans must conform to the approved plans.
- c. Folkways Boulevard & N. 21st St. to the south or another access to the north of this area must be completed.

3. Before occupying the new dwelling units all development & construction must be completed in conformance with the approved plans.

4. All privately-owned improvements shall be permanently maintained by the Permittee or an appropriately established homeowners association approved by the City Attorney.

5. The site plan approved by this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking & circulation elements, & similar matters.

6. The terms, conditions, & requirements of this resolution shall be binding & obligatory upon the Permittee, its successors, & assigns. The building official shall report violations to the City Council which may revoke the special permit or take such other action as may be necessary to gain compliance.

7. The Permittee shall sign & return the City's letter of acceptance to the City Clerk within 30 days following approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The City Clerk shall file a copy of the resolution approving the special permit & the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

8. The site plan as approved with this resolution voids &

supersedes all previously approved site plans, however, all prior resolutions approving Special Permit 1512 & amendments thereto remain in full force & effect specifically amended by this resolution.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

SPECIAL PERMIT 1816 - APPEAL OF DR. DONALD L. JORGENSEN TO THE PLANNING COMMISSION APPROVAL FOR THE EXCAVATION OF SOIL ON PROPERTY GENERALLY LOCATED SOUTH & EAST OF THE CORNER OF NW 40TH & W. VINE STS. - PRIOR to reading:

COOK Moved to continue Public Hearing & to delay Action on Bill 00R-3 for 1 week to 1/24/00.

Seconded by McRoy & carried by the following vote: AYES: Camp, Cook, Fortenberry, McRoy, Seng, Shoecraft; NAYS: Johnson.

SPECIAL PERMIT 1123A - APP. OF PEOPLE'S CITY MISSION TO EXPAND THE EXISTING FACILITY & TO REDUCE THE FRONT YARD SETBACK ALONG R ST. ON PROPERTY GENERALLY LOCATED IN THE BLOCK SURROUNDED BY R, Q, N. 1ST & N. 2ND STS. - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79961 WHEREAS, People's City Mission has submitted an application designated as Special Permit 1123A for authority to amend Special Permit 1123 to expand the existing City Mission & to allow a reduction in the front yard setback from 15' to 6' 3" along "R" St. on property located at 110 "Q" St., & legally described to wit:

Lots 4 through 11, Block 263, & the abutting vacated "Q" St., "R" St., & the east/west alley in Block 263, Original Plat of Lincoln, located in the SW $\frac{1}{4}$  of Sec. 23, T10N, R6E of the 6th P.M., Lincoln, Lancaster County, Nebraska;

WHEREAS, the real property adjacent to the area included within the site plan for this expansion of the People's City Mission & reduction in the front yard setback will not be adversely affected; &

WHEREAS, said site plan together with the terms & conditions hereinafter set forth are consistent with the intent & purpose of Title 27 of the LMC to promote the public health, safety, & general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the App. of People's City Mission, hereinafter referred to as "Permittee", to amend Special Permit 1123 to expand the existing City Mission & to allow a reduction in the front yard setback from 15' to 6' 3" along "R" St., on the property legally described above, be & the same is hereby granted under the provisions of Sec. 27.63.620 of the LMC upon condition that construction & operation of said expansion be in strict compliance with said application, the site plan, & the following additional express terms, conditions, & requirements:

1. This permit approves the expansion of the People's City Mission & adjustment of the front yard setback along "R" St. from 15' to 6' 3".

2. Before receiving building permits:

- a. The Permittee must submit five revised copies of the entire site plan packet which have been approved by the

Planning Dept.

b. The construction plans must conform to the approved plans.

3. Before occupying the new additions to the existing facility all development & construction must be completed in conformance with the approved plans.

4. All privately-owned improvements shall be permanently maintained by the Permittee.

5. The site plan approved by this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking & circulation elements, & similar matters.

6. The site plan approved by this resolution voids & supersedes all previously approved site plans, however, all prior resolutions approving Special Permit 1123 & amendments thereto remain in full force & effect except as specifically amended by this resolution.

7. The terms, conditions, & requirements of this resolution shall be binding & obligatory upon the Permittee, its successors, & assigns. The building official shall report violations to the City Council which may revoke the special permit or take such other action as may be necessary to gain compliance.

8. The Permittee shall sign & return the City's letter of acceptance to the City Clerk within 30 days following approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The City Clerk shall file a copy of the resolution approving the special permit & the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

USE PERMIT 99A - APPEAL BY WHACO CORP. OF THE PLANNING COMMISSION APPROVAL TO CONVERT THE APPROVED 110,850 SQ. FT. OF RETAIL/COMMERCIAL & RESTAURANT SPACE INTO 120,000 SQ. FT. OF RETAIL SPACE FOR A DISCOUNT STORE ON PROPERTY LOCATED ON THE NORTHWEST CORNER OF 27TH ST. & PINE LAKE RD. - PRIOR to reading:

COOK Moved to withdraw Bill 00R-10 which was placed on file in the Use Permit File.

Seconded by McRoy & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

SPECIAL PERMIT 1808 - APP. OF NEBCO, INC. TO DEVELOP FALLBROOK C.U.P. CONSISTING OF 314 DWELLING UNITS ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-16, 00R-18, 00R-19, 00R-20) - PRIOR to reading:

CAMP Moved to delay action on Bill 00R-17 for 1 week to 01/24/00.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

USE PERMIT 124 - APP. OF NEBCO, INC. TO DEVELOP 620,000 SQ. FT OF COMMERCIAL SPACE & APPROX. 50 DWELLING UNITS ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9,

00-10, 00R-16, 00R-17, 00R-19, 00R-20) - PRIOR to reading:

CAMP Moved to delay action on Bill 00R-18 for 1 week to 01/24/00.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

ACCEPTING & APPROVING THE PRE. PLAT OF FALLBROOK ADD. ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-16, 00R-17, 00R-18, 00R-20) - PRIOR to reading:

CAMP Moved to delay action on Bill 00R-19 for 1 week to 01/24/00.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

RESO. A-79933 - SPECIAL PERMIT 1786 - APP. OF QUIN-C, INC. TO DEVELOP BLACK FOREST ESTATES C.U.P. ON PROPERTY GENERALLY LOCATED AT S. 62ND ST. & OLD CHENEY RD. - PRIOR to reading:

CAMP Moved to accept a Substitute Resolution.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

A-79933 WHEREAS, Quin-C, Inc. has submitted an application designated as Special Permit 1786 for authority to develop Black Forest Estates C.U.P. consisting of 88 dwelling units on property located at S. 62nd St. & Old Cheney Rd., & legally described to wit:

Lot 9, Vandervoort Add., Lot 64 I.T. & Lot 59 I.T. all located in the S½ of Sec. 9, T9N, R7E of the 6th P.M., City of Lincoln, Lancaster County, Nebraska, & more particularly described as follows:

Beginning at the southwest corner of said Lot 9; thence on an assumed bearing of north 00< 01 mins. 32 secs. east along a west line of said Lot 9, a distance of 169.30' to a west corner of said Lot 9; thence north 42< 05 mins. 34 secs. west along a west line of said Lot 9, a distance of 237.19' to a west corner of said Lot 9; thence north 00< 01 mins. 32 secs. east along a west line of said Lot 9, a distance of 488.09' to a west corner of said Lot 9; thence north 23< 41 mins. 53 secs. west along a west line of said Lot 9, a distance of 459.81' to the northwest corner of said Lot 9; thence north 89< 57 mins. 47 secs. east along the north line of said Lot 9 & the north line of said Lot 64 I.T., a distance of 1141.65' to the northeast corner of said Lot 64 I.T., said point also being the northwest corner of said Lot 59 I.T.; thence north 89< 55 mins. 21 secs. east along the north line of said Lot 59 I.T., a distance of 249.88' to the northeast corner of said Lot 59 I.T.; thence south 32< 37 mins. 01 secs. east along the northeast line of said Lot 59 I.T., a distance of 627.22' to the most easterly corner of said Lot 59 I.T.; thence south 34< 02 mins. 14 secs. west along a southeast line of said Lot 59 I.T., a distance of 437.65' to an east corner of said Lot 59 I.T.; thence south 26< 05 mins. 10 secs. west along a southeast line of said Lot 59 I.T., a distance of 478.53' to the southeast corner of said Lot 59 I.T., said point being on the south line of said SE¼; thence south 89< 45 mins. 04 secs.

west along the south line of said Lot 59 I.T. & the south line of said SE¼, a distance of 130.20' to a south corner of said Lot 59 I.T., said point also being the south quarter corner of said Sec. 9; thence south 89° 59 mins. 10 secs. west along the south line of Lot 59 I.T. & Lot 64 I.T., said line being the south line of said SW¼, a distance of 550.78' to the southwest corner of said Lot 64 I.T.; thence north 00° 03 mins. 36 secs. west along the west line of said Lot 64 I.T., a distance of 66.00' to the southeast corner of said Lot 9; thence south 89° 59 mins. 10 secs. west along the south line of said Lot 9, a distance of 249.67' to the true point of beginning; said tract contains a calculated area of 39.65 acres, or 1,727,296.11 sq. ft. more or less;

WHEREAS, the real property adjacent to the area included within the site plan for this community unit plan will not be adversely affected; &

WHEREAS, said site plan together with the terms & conditions hereinafter set forth are consistent with the intent & purpose of Title 27 of the LMC to promote the public health, safety, & general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the App. of Quin-C, Inc., hereinafter referred to as "Permittee", to develop Black Forest Estates C.U.P., on the property legally described above, be & the same is hereby granted under the provisions of Sec. 27.63.320 & Chapter 27.65 of the LMC upon condition that construction & operation of said community unit plan be in strict compliance with said application, the site plan, & the following additional express terms, conditions, & requirements:

1. This permit approves:
  - a. 88 dwelling units.
  - b. Adjustment of the required front yard setback to a five foot front yard setback except along Old Cheney Rd. with a minimum 22' setback for garages.
  - c. Adjustment of the required rear yard to a five foot rear yard on Lot 7, Block 7.
  - d. Accessory dwelling units described as a single living unit having less than 1,000 sq. ft. of floor space & that would generally consist of an apartment on top of a garage, connected to a garage or main home, or existing in the basement that would be typically used by an older family member, college student or renter as affordable housing often referred to as a "granny flat." One accessory dwelling unit may be permitted on each of the lots in Blocks 4 through 6.
2. Before receiving building permits:
  - a. The Permittee must submit a revised & reproducible final plan & five copies to the Planning Dept.. Said final plan shall show:
    - i. A private roadway connection to Tanglewood Ln. subject to a public access easement.
    - ii. A 30' water main easement between Crosscut Ln. & Tanglewood Ln.
    - iii. The sanitary sewer system revised to the

satisfaction of the Dept. of Public Works & Utilities.

- iv. A note stating that the developer acknowledges that the Old Cheney Rd. widening project will effect the grading along the Old Cheney Rd. frontage of the Black Forest Estates Subdivision but that the project has not been finalized & that Developer agrees that no building permit will be issued to Lots 1 & 2, Block 2, Black Forest Estates until such time as Public Works & Developer come to an agreement as to the final grading plan for the Black Forest Estates/Old Cheney Rd. right-of-way line with an emphasis to maximize protection of the existing tree mass along Old Cheney Rd.
- v. A note stating that the roadway connections to Pheasant Run Place, a private roadway, & to Edgewood Shopping Center may be eliminated.
- vi. Delete the hiker/bike path shown to Tanglewood Ln.
- vii. Add a note stating that the street stub at Old Cheney Rd. & S. 62nd St. shall be dedicated to the City of Lincoln as part of the Phase I final plat.
- viii. Add a note stating that the public access easement over the private roadway connection to Tanglewood Ln. shall be dedicated to the City of Lincoln & shown as an outlot on the Phase I final plat.
- ix. Add a note stating that that portion of the private roadway which abuts any building lot within the Phase I final plat shall be completed or the completion guaranteed by a bond or an approved escrow of security agreement prior to scheduling the Phase I final plat on the Planning Commission agenda.
- x. Add a note stating that the entire private roadway connection to Tanglewood Ln. shall be completed or the completion thereof guaranteed by a bond or an approved escrow of security agreement prior to the earlier of (a) scheduling the Phase II final plat on the Planning Commission agenda or (b) the final platting of the 40th dwelling unit.

b. The construction plans must conform to the approved plans.

c. Final plats within this community unit plan must be approved by the City.

3. Before occupying the dwelling units all development & construction must be completed in conformance with the approved plans.

4. All privately-owned improvements must be permanently maintained by the owner or an appropriately established homeowners

association approved by the City Attorney.

5. The site plan approved by this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking & circulation elements, & similar matters.

6. The terms, conditions, & requirements of this resolution shall be binding & obligatory upon the Permittee, its successors, & assigns. The building official shall report violations to the City Council which may revoke the special permit or take such other action as may be necessary to gain compliance.

7. The Permittee shall sign & return the City's letter of acceptance to the City Clerk within 30 days following approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The City Clerk shall file a copy of the resolution approving the special permit & the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

Introduced by Jon Camp

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

RESO. A-79934 - ACCEPTING & APPROVING THE PRE. PLAT OF BLACK FOREST ESTATES - PRIOR to reading:

CAMP Moved to accept a Substitute Resolution.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

A-79934 WHEREAS, Quin-C, Inc. has submitted the Pre. Plat. of Black Forest Estate for acceptance & approval; &

WHEREAS, the Lincoln City - Lancaster County Planning Commission has reviewed said preliminary plat & made recommendations as contained in the letter dated Oct. 22, 1999, which is attached hereto as Exhibit "A"; &

WHEREAS, Quin-C, Inc. has appealed the site specific conditions contained in the letter dated Oct. 22, 1999 requiring Quin-C, Inc. to revise the Pre. Plat. to show a roadway connection to Tanglewood Ln.; the water main easement, sanitary sewer system, & the grading & drainage revised & approved by the Public Works & Utilities Dept.; & the grading & drainage plan revised as requested by the Public Works & Utilities Dept. with an emphasis to maximize protection of existing tree masses on Old Cheney Rd.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the appeal filed by Quin-C, Inc. is hereby denied.

BE IT FURTHER RESOLVED that the Pre. Plat. of Black Forest Estates, located at S. 62nd St. & Old Cheney Rd. as submitted by Quin-C, Inc. is hereby accepted & approved, subject to the terms & conditions set forth in Exhibit "A" as amended below, which is attached hereto & made a part of this resolution as though fully set forth verbatim.

BE IT FURTHER RESOLVED that Exhibit "A" be amended as follows:

1. Delete conditions 1.1.1, 1.1.8, & 1.1.12.

2. Add a new condition No. 3.2.12 to read as follows:

The Subdivider shall revise the Pre. Plat to show:

a. A private roadway connection to Tanglewood Ln. subject to a public access easement.

- b. A 30' water main easement between Crosscut Ln. & Tanglewood Ln.
- c. The sanitary sewer system revised to the satisfaction of the Dept. of Public Works & Utilities.
- d. Add a note stating that Developer acknowledges that the Old Cheney Rd. widening project will effect the grading along the Old Cheney Rd. frontage of the Black Forest Estates Subdivision but that the project has not been finalized, & that Developer agrees that no building permit will be issued to Lots 1 & 2, Block 2, Black Forest Estates until such time as Public Works & Developer come to an agreement as to the final grading plan for the Black Forest Estates/Old Cheney Rd. right-of-way line with an emphasis to maximize protection of the existing tree mass along Old Cheney Rd.
- e. Add a note stating that the roadway connections to Pheasant Run Place, a private roadway, & to Edgewood Shopping Center may be eliminated.
- f. Delete the hiker/bike path shown to Tanglewood Ln.
- g. Add a note stating that the street stub at Old Cheney Rd. & S. 62nd St. shall be dedicated to the City of Lincoln as part of the Phase I final plat.
- h. Add a note stating that the public access easement over the private roadway connection to Tanglewood Ln. shall be dedicated to the City of Lincoln & shown as an outlot on the Phase I final plat.
- i. Add a note stating that that portion of the private roadway which abuts any building lot within Phase I final plat shall be completed or the completion guaranteed by a bond or an approved escrow of security agreement prior to scheduling the Phase I final plat on the Planning Commission agenda.
- j. Add a note stating that the entire private roadway connection to Tanglewood Ln. shall be completed or the completion thereof guaranteed by a bond or an approved escrow of security agreement prior to the earlier of (a) scheduling the Phase II final plat on the Planning Commission agenda or (b) the final platting of the 40th dwelling unit.

BE IT FURTHER RESOLVED that the City Council finds that the tract to be subdivided is surrounded by such development or unusual conditions that strict application of the subdivision requirements would result in actual difficulties or substantial hardship & the following modifications to the



subdivision requirements are therefore approved:

1. The requirement of Sec. 26.27.020 of the LMC that sidewalks be installed along both sides of Black Forest Dr. is hereby waived along the west side of Black Forest Dr.

2. The Design Standards for public streets & private roadways are hereby waived to allow roll-over curb section including 24' asphalt.

3. The Design Standards for storm sewers requiring open channels to have a paved low flow liner is hereby waived.

Introduced by Jon Camp

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

#### REPORTS TO CITY OFFICERS

INVESTMENT OF FUNDS - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79969 BE IT HEREBY RESOLVED BY THE CITY COUNCIL of the City of Lincoln, Nebraska:

That the attached list of investments be confirmed & approved, & the City Treasurer is hereby directed to hold said investments until maturity unless otherwise directed by the City Council. (Investments beginning 01/07/00)

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING THE DISTRIBUTION OF FUNDS REPRESENTING INTEREST EARNINGS ON SHORT-TERM INVESTMENTS OF IDLE FUNDS DURING THE MONTH ENDED SEPT. 30, 1999 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79970 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That during the month ended Sept. 30, 1999, \$235,048.81 was earned from short-term investments of "IDLE FUNDS". The same is hereby distributed to the various funds on a pro-rata basis using the balance of each fund & allocating a portion of the interest on the ratio that such balance bears to the total of all fund balances.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING THE DISTRIBUTION OF FUNDS REPRESENTING INTEREST EARNINGS ON SHORT-TERM INVESTMENTS OF IDLE FUNDS DURING THE MONTH ENDED OCT. 30, 1999 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79971 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That during the month ended Oct. 31, 1999, \$209,411.38 was earned from short-term investments of "IDLE FUNDS". The same is hereby distributed to the various funds on a pro-rata basis using the balance of each fund & allocating a portion of the interest on the ratio that such balance bears to the total of all fund balances.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING THE DISTRIBUTION OF FUNDS REPRESENTING INTEREST EARNINGS ON SHORT-TERM INVESTMENTS OF IDLE FUNDS DURING THE MONTH ENDED NOV. 30, 1999 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79972 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska: That during the month ended Nov. 30, 1999, \$218,972.72 was earned from short-term investments of "IDLE FUNDS". The same is hereby distributed to the various funds on a pro-rata basis using the balance of each fund & allocating a portion of the interest on the ratio that such balance bears to the total of all fund balances.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

LINCOLN WATER & WASTEWATER SYSTEM RECAPITULATION OF DAILY CASH RECEIPTS FOR DEC., 1999 - CLERK presented said report which was placed on file in the Office of the City Clerk. (8-71)

ACCEPTING THE REPORT OF NEW & PENDING TORT CLAIMS AGAINST THE CITY & APPROVING DISPOSITION OF CLAIMS SET FORTH THEREIN FOR THE PERIOD OF DEC. 1 THRU 31, 1999 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79966 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska: That the claims listed in the attached report, marked as Exhibit "A", dated Jan. 3, 2000, of various new & pending tort claims filed against the City of Lincoln with the Office of the City Attorney or the Office of the City Clerk, as well as claims which have been disposed of, are hereby received as required by Neb. Rev. Stat. § 13-905 (Reissue 1997). The dispositions of claims by the Office of the City Attorney, as shown by the attached report, are hereby approved:

<u>DENIED</u>		<u>ALLOWED</u>	
Sharon & Larry Zweerink	\$350,000.00	Imad Turi	\$ 572.48
Justin Jones	1,508.29	Cindy Farley	825.00
Bernie Jelinek	1,117.00	Michael Hertzler - repair	
State Farm Ins. Co.		by Pub. Works	
(Thomas Suhr, Insured)	691.78	Dale & Jacqueline Mahlman	1,121.12
Douglas Jones	279.00	Kaleb Nixon - pay storage	
Kristen K. Miller	NAS*	fees to tow company	
Gail Frazier	NAS*	Rex & Marilyn Jensen	1,750.00
Alisa Sanford, parent of		Cary G. Crocker	464.00
Shauna Sanford	NAS*	Robert D. Hampton & Hampton	
Cherlyn Turner	NAS*	Development Services &	
Rhonda Nimmich, parent of		Robert Hoback dba C & H	
Samantha Jo Nimmich	NAS*	Custom Homes	5,000.00
Magdalena Krynsky	45.00		

\* No amount specified.

The City Attorney is hereby directed to mail to the various claimants listed herein a copy of this resolution which shows the final disposition of their claim.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

#### OTHER RESOLUTIONS

APP. OF MEDICI FOUNDATION TO CONDUCT A RAFFLE WITHIN THE CITY OF LINCOLN FROM JAN. 17, 2000 THROUGH FEB. 19, 2000 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79954 WHEREAS, Medici Foundation has made application for a permit to conduct a raffle in the City of Lincoln pursuant to Chapter 9.32 of the LMC; &

WHEREAS, said application complies with all of the requirements of Sec. 9.32.030 of the LMC.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That, after public hearing duly had as required by Sec. 9.32.050 of the LMC, the City Council does hereby grant a permit to Medici Foundation to conduct a raffle in the City of Lincoln in accordance with the application filed by Carol Thompson. The City Clerk is directed to issue a permit upon the payment by the applicant of the required fee, said permit to be valid only for the specific raffles described in said application & only for a period of one year from the date of approval of this resolution. Said permit shall be subject to all of the conditions & requirements of Chapter 9.32 of the LMC.

BE IT FURTHER RESOLVED that pursuant to Sec. 9.32.080 of the LMC, a tax of 5% is imposed upon the gross proceeds received from the sale of raffle chances or tickets within the City of Lincoln, which tax shall be due no later than sixty (60) days after the conclusion of each raffle to be conducted hereunder, & if unpaid at that time, shall thereafter be delinquent.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

COMP. PLAN AMENDMENT 94-43 - AMENDING THE LINCOLN LAND USE PLAN TO CHANGE THE LAND USE FROM "PARKS & OPEN SPACE" & "WETLANDS & WATER BODIES" TO "PUBLIC & SEMI-PUBLIC" ON PROPERTY GENERALLY LOCATED WEST OF SUN VALLEY BLVD. & SOUTH OF CHARLESTON ST. IN THE VICINITY OF N. 1ST ST. - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79955 WHEREAS, the Planning Director has made application to amend the 1994 Lincoln City-Lancaster County Comprehensive Plan to change property generally located west of Sun Valley Boulevard & south of Charleston St. in the vicinity of N. 1st St. from "Parks & Open Space" & "Wetlands & Water Bodies" to "Public & Semi-Public"; &

WHEREAS, the Lincoln City-Lancaster County Planning Commission has made recommendations on said proposed change & has recommended approval of said proposed change.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of

Lincoln, Nebraska:

That Figure 16 (Lincoln's Land Use Plan) of the 1994 Lincoln City-Lancaster County Comprehensive Plan be & the same is hereby revised to change property generally located west of Sun Valley Boulevard & south of Charleston St. in the vicinity of N. 1st St. from "Parks & Open Space" & "Wetlands & Water Bodies" to "Public & Semi-Public" as shown on Attachment "A" which is attached hereto & made a part hereof by reference.

BE IT FURTHER RESOLVED that any other references in said plan which may be affected by the above-specified amendments be, & they hereby are amended to conform to such specific amendments.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

AMENDING THE CITY'S RESOLUTION ON LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES TO CLARIFY LANGUAGE; TO PROVIDE FOR TRAVEL APPROVAL BY DEPARTMENT DIRECTORS & INSTITUTING A REQUIREMENT FOR DIRECTORS TO SUBMIT A SEMI-ANNUAL REPORT REGARDING TRAVEL AUTHORIZATIONS; TO PROVIDE THAT TEAMS ARE ELIGIBLE FOR THE MAYOR'S AWARD OF EXCELLENCE; & TO ELIMINATE REFERENCES TO THE CITY'S WELLNESS PROGRAM - PRIOR to reading:

SHOECRAFT Moved to accept a Substitute Resolution.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

JOHNSON Moved to place Bill 00R-4 on Pending.

Seconded by Cook & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING A 4-YR. CONTRACT BETWEEN THE CITY & PHANTOM, INC. FOR VEHICULAR TOWING & STORAGE. (IN CONNECTION W/00-6) - PRIOR to reading:

JOHNSON Moved to delay action on Bill 00R-5 for 1 week to 1/24/00.

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING AN AGRMT. BETWEEN THE CITY & THE STATE OF NEBRASKA DEPT. OF ROADS FOR GUARDRAIL IMPROVEMENTS ON THE HWY. 6 BRIDGES OVER OAK CREEK -CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79957 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the attached Agreement between the City of Lincoln & the State of Nebraska Dept. of Roads for the improvement in Hwy. US-6 in Lincoln for the installation of guardrails & concrete medians on the bridge approaches & bridge rails on the bridges over Oak Creek in accordance with the terms & conditions contained in said Agreement, is hereby approved & the Mayor is authorized to execute the same on behalf of the City of Lincoln.

The City Clerk is directed to return the executed copies of the Agreement to Allan Abbott, Public Works & Utilities Director, for transmittal & execution by the State Dept. of Roads.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPOINTING HARLAN KING TO THE VETERANS MEMORIAL GARDEN ADVISORY COMMITTEE TO FILL

AN UNEXPIRED TERM EXPIRING OCT. 2, 2001 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79958 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the appointment of Harlan King to the Veterans Memorial Garden Advisory Committee to fill an unexpired term expiring Oct. 2, 2001 is hereby approved.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPOINTING LLOYD D. HINKLEY, REV. LAUREN D. EKDAHL, RICHARD BOUCHER, & JOHN SNOWDEN TO THE CHARTER REVISION COMMISSION FOR TERMS EXPIRING JULY 15, 2003 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79959 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the appointment of Lloyd D. Hinkley, Rev. Lauren D. Ekdahl, Richard Boucher, & John Snowden to the Charter Revision Commission for terms expiring July 15, 2003 is hereby approved.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

REAPPOINTING BARB BIFFLE TO THE CHARTER REVISION COMMISSION FOR A TERM EXPIRING JULY 15, 2003 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79960 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the reappointment of Barb Biffle to the Charter Revision Commission for term expiring July 15, 2003 is hereby approved.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPOINTING MARK DAHMKE TO THE GOVERNMENT ACCESS & INFORMATION COMMITTEE FOR A 2-YR. TERM EXPIRING JAN. 1, 2002 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79962 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the appointment of Mark Dahmke to the Government Access & Information Committee for a 2-yr. term expiring Jan. 1, 2002 is hereby approved.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

REAPPOINTING SUSAN HOLLAND TO THE GOVERNMENT ACCESS & INFORMATION COMMITTEE FOR A 2-YR. TERM EXPIRING JAN. 1, 2002 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79963 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the reappointment of Susan Holland to the Government Access & Information Committee for a 2-yr. term expiring Jan. 1, 2002 is hereby approved.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPOINTING KAREN KILGARIN TO THE NEBRASKA CAPITOL ENVIRONS COMMISSION FOR A 3-YR. TERM EXPIRING JAN. 9, 2003 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79964 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska: That the appointment of Karen Kilgarin to the Nebraska Capitol Environs Commission for a 3-yr. term expiring Jan. 9, 2003 is hereby approved.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

REAPPOINTMENT OF KIM TODD TO THE NEBRASKA CAPITOL ENVIRONS COMMISSION FOR A 3-YR. TERM EXPIRING JAN. 9, 2003 - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79965 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska: That the reappointment of Kim Todd to the Nebraska Capitol Environs Commission for a 3-yr. term expiring Jan. 9, 2003 is hereby approved.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

COMP. PLAN AMENDMENT 94-41 - AMENDING THE 1994 COMPREHENSIVE PLAN TO EXTEND THE FUTURE SERVICE LIMITS & TO CHANGE THE LAND USE PLAN, FUNCTIONAL CLASSIFICATIONS, FUTURE RD. NETWORK, & FUTURE WATER SYSTEM ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-17, 00R-18, 00R-19, 00R-20) - PRIOR to reading:

CAMP Moved to delay Action on Bill 00R-16 for 1 week to 1/24/00.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING AN ANNEXATION AGRMT. BETWEEN THE CITY & NEBCO, INC. WITH REGARD TO THE ANNEXATION OF APPROX. 318 ACRES OF LAND GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00-10, 00R-16, 00R-17, 00R-18, 00R-19) - PRIOR to reading:

CAMP Moved to delay Action on Bill 00R-20 for 1 week to 1/24/00.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING A 3-YR. CONTRACT WITH THE LINCOLN EMPLOYEES ASSISTANCE PROGRAM TO PROVIDE ASSESSMENT & REFERRAL TO EMPLOYEES & FAMILY MEMBERS FOR PERSONAL PROBLEMS WHICH MAY AFFECT JOB PERFORMANCE - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79967 WHEREAS, there are employees working for the City of Lincoln who may, from time to time, experience problems which affect job performance; &

WHEREAS, the Lincoln Employees Assistance Program has established programs of assessment & referral in areas such as alcohol abuse, family, marital, emotional, financial, & legal concerns; &

WHEREAS, it is in the best interest of the employees of the City of

Lincoln to have available to them the program of assisting & rehabilitating those employees who may have personal problems affecting job performance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the attached contract by & between the City of Lincoln & the Lincoln Employees Assistance Program for a term of Jan. 1, 2000 through Dec. 31, 2002 is hereby accepted & approved on behalf of the city & the Mayor is hereby authorized to execute said contract on behalf of the City & to bind the City pursuant to the terms & conditions contained in the said contract.

BE IT FURTHER RESOLVED that the fees for the services provided by the Lincoln Employees Assistance Program pursuant to the terms & conditions of the contract shall be \$57,500 for 2000, \$59,800 for 2001, & \$61,000 for 2002, all as set forth in the contract between the parties.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

SETTING HEARING DATE OF MON., JAN. 31, 2000 AT 1:30 P.M. ON THE APP. OF BENICIO C. LOBO DBA ZAPATA MEXICAN RESTAURANT-CANTINA FOR A RETAIL CLASS I LIQUOR LICENSE AT 815 "O" ST. - CLERK read the following resolution, introduced by Jerry Shoecraft, who moved its adoption:

A-79968 BE IT RESOLVED by the City Council, of the City of Lincoln, that a hearing date is hereby fixed for Mon., Jan. 31, 2000 at 1:30 p.m. or as soon thereafter as possible in the City Council Chambers, County-City Building, 555 S. 10th St., Lincoln, NE, for the purpose of considering the App. of Benicio C. Lobo dba Zapata Mexican Restaurant & Cantina for a Retail Class I Liquor License at 815 "O" St.

If the Police Dept. is unable to complete the investigation by said time, a new hearing date will be set.

Introduced by Jerry Shoecraft

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

#### **ORDINANCES - 1ST & 2ND READING**

APPROVING A TRANSFER OF APPROPRIATIONS WITHIN THE WATER CONSTRUCTION FUND OF \$360,000.00 FROM CAPITAL IMPROVEMENT PROJ. 506220 (48" WATER MAIN FROM 77TH & VINE ST. TO 84TH TO SE RESERVOIR AT 84TH & YANKEE HILL RD.) TO CAPITAL IMPROVEMENT PROJ. 701178 (16" WATER MAIN IN PINE LAKE RD. FROM 84TH TO 98TH STS.); & \$130,000.00 FROM CAPITAL IMPROVEMENT PROJ. 701175 (WATER MAIN IN YANKEE HILL RD., FROM 20TH TO 14TH STS. & 1/4 MILE NORTH) TO CAPITAL IMPROVEMENT PROJ. 506050 (SUBSIDIES) - CLERK read an ordinance, introduced by Jerry Shoecraft, approving the transfer of appropriations between certain capital improvement projects within the Water Construction Fund, the first time.

AMENDING CHAPTER 8.08 OF THE LMC, THE AMBULANCE TRANSPORTATION CODE, TO ALLOW AN EXTENSION OF A CURRENT CERTIFICATE OF PUBLIC CONVENIENCE & NECESSITY FOR

A PERIOD NOT TO EXCEED TWO YEARS - CLERK read an ordinance, introduced by Jerry Shoecraft, amending Chapter 8.08 of the LMC, the Ambulance Transportation Code, by amending Sec. 8.08.050 to allow extensions to facilitate the review of new applications for Certificates of Public Convenience & Necessity; adding a new section numbered 8.08.051 to allow an extension of a current Certificate of Public Convenience & Necessity for a period not to exceed 2 yrs.; & repealing Sec. 8.08.050 of the LMC as hitherto existing, the first time.

CAMP Moved to withdraw Bill 00-12.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, having been **WITHDRAWN**, was assigned the File #38-4324 & was placed on file in the Office of the City Clerk.

AMENDING CHAPTER 5.06 OF THE LMC TO INCREASE THE EXAMINATION FEE FOR A FIRST-CLASS & SECOND-CLASS ARBORIST'S CERTIFICATE FROM \$15.00 TO \$25.00 & TO INCREASE THE ANNUAL RENEWAL FEE FOR AN ARBORIST'S CERTIFICATE FROM \$4.00 TO \$10.00 - CLERK read an ordinance, introduced by Jerry Shoecraft, amending Chapter 5.06 of the LMC relating to Arborists by amending Sec. 5.06.060 to increase the examination fee for a first-class arborists's certificate from \$15.00 to \$25.00 & for a second-class arborist's certificate from \$15.00 to \$25.00; by amending Sec. 5.06.100 to increase the annual renewal fee for an arborist's certificate from \$4.00 to \$10.00; & repealing Secs. 5.06.060 & 5.06.100 of the LMC as hitherto existing, the first time.

AMENDING SEC. 8.20.050 OF THE LMC TO REFLECT CHANGES MADE TO THE NEBRASKA PURE FOOD ACT - CLERK read an ordinance, introduced by Annette McRoy, amending Chapter 8.20 of the LMC, the Lincoln Food Code, by amending Sec. 8.20.050 regarding the adoption of sanitation standards & regulations to reflect changes made to the Nebraska Pure Food Act; & repealing Sec. 8.20.050 of the LMC as hitherto existing, the second time.

CHANGE OF ZONE 3217 - APP. OF RIDGEWOOD NEIGHBORHOOD ASSOC. FOR A CHANGE FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL ON PROPERTY GENERALLY LOCATED 1/4 MILE SOUTH & EAST OF THE CORNER OF S.W. 27TH ST. & W. DENTON RD. - CLERK read an ordinance, introduced by Annette McRoy, amending the Lincoln Zoning Dist. Maps attached to & made a part of Title 27 of the LMC, as provided by Sec. 27.05.020 of the LMC, by changing the boundaries of the districts established & shown thereon, the second time.

CHANGE OF ZONE 3218 - APP. OF THE PLANNING DIRECTOR TO AMEND THE ZONING ORDINANCE OF THE LMC TO ADD CHAPTER 27.68 RELATING TO PROVISIONS FOR "PERSONAL WIRELESS FACILITIES" TO PROVIDE A PURPOSE, DEFINITIONS, TO PROVIDE FOR PERMITS, PERMITS TERMS, RENEWAL APPLICATIONS, RENEWAL DETERMINATIONS, CONDITIONS FOR RENEWAL, LOCATION PREFERENCES, APPLICATION REQUIREMENTS, STANDARDS FOR EVALUATION, DESIGN CRITERIA, GENERAL REQUIREMENTS, ABANDONMENT OF FACILITIES, & TO ALLOW PERSONAL WIRELESS SERVICES FACILITIES IN ANY ZONING DISTRICT. (IN CONNECTION W/00-4) - PRIOR to reading:

COOK Moved to act on Bill 00-3 immediately following the conclusion of the Public Hearing.



Seconded by McRoy & **LOST** by the following vote: AYES: Camp, Cook, McRoy, Seng; NAYS: Fortenberry, Johnson, Shoecraft. (Needed 5 votes to pass)

CLERK Read an ordinance, introduce by Annette McRoy, amending Title 27 of the LMC by adding a new Sec. 27.68.010 to provide a purpose; adding a new Sec. 27.68.020 to provide definitions; adding a new Sec. 27.68.030 to provide for permits; adding a new Sec. 27.68.040 to provide for a permit term; adding a new Sec. 27.68.050 to provide for renewal applications; adding a new Sec. 27.68.060 to provide for renewal determinations; adding a new Sec. 27.68.070 to provide for conditions for renewal; adding a new Sec. 27.68.080 to provide for location preferences; adding a new Sec. 27.68.090 to provide application requirements; adding a new Sec. 27.68.100 to provide standards for evaluation; adding a new Sec. 27.68.110 to provide for design criteria; adding a new Sec. 27.68.120 to provide for general requirements; adding a new Sec. 27.68.130 to provide for abandonment of facilities; adding a new Sec. 27.68.140 to allow personal wireless services facilities in any zoning districts; adding a new Sec. 27.63.720 to allow personal wireless services facilities in any zoning district, the second time. **(See Council Action under "ORDINANCES - 3RD READING".)**

CHANGE OF ZONE 3219 - APP. OF THE PLANNING DIRECTOR TO AMEND SECTIONS 27.03.110 & 27.63.150 OF THE LMC RELATING TO THE DEFINITION OF "BROADCAST TOWER" & THE GUIDELINES FOR REVIEW OF A SPECIAL PERMIT FOR A "BROADCAST TOWER". (IN CONNECTION W/00-3) - PRIOR to reading:

COOK Moved to act on Bill 00-4 immediately following the conclusion of the Public Hearing.

Seconded by McRoy & **LOST** by the following vote: AYES: Camp, Cook, McRoy, Seng; NAYS: Fortenberry, Johnson, Shoecraft. (Needed 5 votes to pass)

CLERK Read an ordinance, introduced by Annette McRoy, amending Title 27 of the LMC, the Zoning Code, by amending Sec. 27.03.110 to amend the definition of "broadcast tower" to provide that personal wireless service facilities not exceeding 50' in height shall not be considered broadcast towers; by amending Sec. 27.63.150 to provide that broadcast towers allowed by special permit shall be reviewed under the guidelines established in Chapter 27.68, Personal Wireless Facilities; repealing §27.03.110 & 27.63.150 of the LMC as hitherto existing; & declaring an emergency, the second time. **(See Council Action under "ORDINANCES - 3RD READING".)**

AMENDING SEC. 6.08.160 OF THE LMC TO INCREASE THE MINIMUM FINE FOR BARKING DOGS TO \$50.00 - CLERK read an ordinance, introduced by Annette McRoy, amending Chapter 6.08 of the LMC by amending Sec. 6.08.160 relating to barking dogs to raise the minimum fines for first & second offenses & to specify the business premises of licensed veterinarians as an exception to the section; amending Sec. 6.08.350 to allow specific penalties under Sec. 6.08.160; & repealing Sec. 6.08.160 & 6.08.350 of the LMC as hitherto existing, the second time.

APPROVING A LEASE AGRMT. BETWEEN THE CITY & PHANTOM, INC. FOR THE LEASE OF CITY OWNED PROPERTY FOR USE AS AN IMPOUND LOT FOR TOWED VEHICLES. (IN

CONNECTION W/00R-5) - CLERK read an ordinance, introduced by Annette McRoy, accepting & approving a Lease Agreement between the City of Lincoln & Phantom, Inc. for the lease of City owned property for use as an impound lot for towed vehicles, the second time.

ESTABLISHING RESIDENTIAL & COMMERCIAL CLASSES OF GAS SERVICE & APPLICABLE RATES TO BE CHARGED BY PEOPLES NATURAL GAS FOR GAS SERVICE WITHIN THE CITY. (IN CONNECTION W/00-8) - CLERK read an ordinance, introduced by Annette McRoy, establishing residential & commercial classes of gas service & applicable rates to be charged by Peoples Natural Gas Company, Division of UtiliCorp united Inc. (Peoples), for gas service within the City of Lincoln, Nebraska (People's Rate Area Two), the second time.

REAFFIRMING THE PREVIOUSLY APPROVED TARIFFS APPLICABLE TO THE TRANSPORTATION OF NATURAL GAS THROUGH THE 12-INCH NATURAL GAS PIPELINE WHICH IS CONNECTED TO THE DISTRIBUTION SYSTEM SERVING THE CITY (LINCOLN LATERAL). (IN CONNECTION W/00-7) - CLERK read an ordinance, introduced by Annette McRoy, reaffirming the previously approved tariffs applicable to the transportation of natural gas through the 12-inch natural gas pipeline which is connected to the distribution system serving the city of Lincoln, Nebraska, & which is commonly referred to as the Lincoln Lateral, the second time.

ANNEXING APPROX. 318 ACRES OF PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-10, 00R-16, 00R-17, 00R-18, 00R-19, 00R-20) - CLERK read an ordinance, introduced by Annette McRoy, annexing approx. 318 acres of property generally located north of Hwy. 34, south of Alvo Rd., & west of N. 1st St., the second time.

CHANGE OF ZONE 3202 - APP. OF NEBCO, INC. FOR A CHANGE FROM AG AGRICULTURAL TO R-3 RESIDENTIAL, O-3 OFFICE PARK, & B-2 PLANNED NEIGHBORHOOD BUSINESS ON PROPERTY GENERALLY LOCATED NORTH OF HWY. 34, SOUTH OF ALVO RD., & WEST OF N. 1ST ST. (IN CONNECTION W/00-9, 00R-16, 00R-17, 00R-18, 00R-19, 00R-20) - CLERK read an ordinance, introduced by Annette McRoy, amending the Lincoln Zoning Dist. Maps attached to & made a part of Title 27 of the LMC, as provided by Sec. 27.05.020 of the LMC, by changing the boundaries of the districts established & shown thereon, the second time.

#### **MISCELLANEOUS BUSINESS**

**\*\* 11:45 p.m. - Cindy Johnson left the meeting. \*\***

#### **PENDING LIST -**

MAN. APP. OF JON MACKEY FOR FAMOUS DAVE'S RIBS-U, INC. DBA FAMOUS DAVE'S AT 2750 PINE LAKE RD.;

AUTHORIZING WIDENING, RECONSTRUCTION, & IMPROVEMENT OF E. "O" ST. FROM 52ND TO WEDGEWOOD DR. & ACQUISITION OF NECESSARY RIGHT-OF-WAY - Removed from Pending on 1/10/00 to have Action on 1/24/00.

CAMP            Moved to extend the Pending List for 1 week.  
                 Seconded by Shoecraft & carried by the following vote:    AYES: Camp,  
                 Cook, Fortenberry, McRoy, Seng, Shoecraft; NAYS: None; ABSENT: Johnson.

**UPCOMING RESOLUTIONS -**

CAMP            Moved to approve the resolutions to have Public Hearing on Jan. 24,  
                 2000.  
                 Seconded by Shoecraft & carried by the following vote:    AYES: Camp,  
                 Cook, Fortenberry, McRoy, Seng, Shoecraft; NAYS: None; ABSENT: Johnson.

**ADJOURNMENT**

**11:50 P.M.**

CAMP            Moved to adjourn the City Council Meeting of Jan. 18, 2000.  
                 Seconded by Shoecraft & carried by the following vote:    AYES: Camp,  
                 Cook, Fortenberry, McRoy, Seng, Shoecraft; NAYS: None; ABSENT: Johnson.

So ordered.

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Paul A. Malzer, Jr., City Clerk

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Teresa J. Meier-Brock, Office Assistant III